80-499

No.

Supreme Court, U. S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

GEORGE R. WILLIAMS, et al.,
Petitioners,

VS.

PACIFIC MARITIME ASSOCIATION, a non-profit corporation, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an unincorporated association, and I.L.W.U. LOCAL No. 10,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether or not a union breaches its statutory duty to provide fair representation when it agrees to the discharge of a large number of members of the collective bargaining unit for work-related infractions which were not the subject of a discharge penalty when the infractions occurred during the previous four years of employment?

2. Whether or not a union breaches its duty to provide fair representation when it agrees to the discharge of a large number of members of the collective bargaining unit for conduct which was not in violation of any provision of the collective bargaining agreement or applicable working rules at any time during the previous four years of employment?

3. Whether or not a decision of the National Labor Relations Board involving other persons similarly situated, but never subjected to judicial review, is entitled to preclusive effect upon a later case in the courts for unfair representation and breach of the collective bargaining agreement?

4. Whether or not members of the collective bargaining unit may be compelled to agree to the waiver of their rights to fair representation and to be discharged only for good cause as a condition of employment?

5. Whether or not the union and employer breach the collective bargaining agreement when they jointly agree to discharge a large number of members of the bargaining unit without "good cause" and in violation of the past practices of the "common law of the shop"?

6. Whether or not the Court of Appeals abdicated its responsibility to make an independent review of the record when it simply approved the findings of the District Court which were merely xeroxed copies of the findings submitted by the prevailing parties?

THE PARTIES

Petitioners are 51 individuals whose names are listed in the margin.* Respondents are Pacific Maritime Association, a non-profit California corporation composed of all or substantially all of the major stevedoring employers on the Pacific Coast and in the Port of San Francisco. It is an "employer" within the meaning of § 2(2) of the National Labor Relations Act, 29 U.S.C. § 152(2).

Respondent International Longshoremen's and Warehousemen's Union is the certified collective bargaining representative for all longshoremen employed by the members of PMA and is recognized as such under § 2(5) of the Act, 29 U.S.C. § 152 (5).

Respondent ILWU Local No. 10 is the chartered local affiliate of the ILWU for longshoremen working in the Port of San Francisco.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GEORGE R. WILLIAMS, et al., petitioners, pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered against them in the above-entitled case on February 8, 1980.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 617 F.2d 1321 (1980) and is reprinted in Appendix A. The order of the Court of Appeals denying rehearing is unreported and is reprinted in Appendix B. The findings of fact and conclusions of law and judgment of the District Court are unreported and are reprinted in Appendix C and D. Prior to the rendition of the judgment sought to be reviewed, the Court of Appeals rendered two opinions in previous appeals which are reported at 384 F.2d 935 (1967) and 421 F.2d 1287 (1970).

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on February 8, 1980. A timely petition for rehearing was filed on March 7, 1980 and thereafter denied on May 13, 1980. On July 9, 1980, Mr. Justice Rehnquist extended the time for filing a petition for certiorari to and including September 29, 1980. This Court has jurisdiction to review the judgment of the Court of Appeals under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves Sections 7, 8(d), 9(a) and 10(a) of the National Labor Relations Act, as amended, 29 U.S.C. §§157, 158, 159 and 160, and §301(a) of the Labor-Management Relations Act, 1947, 29 U.S.C. § 185. The pertinent provisions thereof are set forth in full in Appendix E.

STATEMENT OF THE CASE

This is a case brought against a union and an employer for breach of the union's duty to provide fair representation and for breach of the collective bargaining agreement. It poses fundamental issues in a developing area of labor law regarding the statutory duty of labor unions to provide fair representation within the meaning of this Court's landmark case of *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192 (1944) and its later evolution in the decision of *Vaca v. Sipes*, 386 U.S. 171 (1967). It calls for a realistic examination of the limits of the authority granted by Congress to certified bargaining representatives. It involves questions of enormous importance not only to the general administration of our labor laws, but also specifically to the thousands of working people, primarily those like petitioners who are not eligible for union membership, whose livelihoods are completely regulated by collective bargaining agreements negotiated and administered throughout the United States.

After four years of employment, petitioners were summarily discharged by the joint action of their collective bargaining representative and employer. Both the District Court, after trial, and the Court of Appeals approved the imposition of the capital punishment of industrial relations upon petitioners for conduct which was the subject of only nominal fines or brief suspensions from work when they occurred years earlier. The Ninth Circuit, while paying lip service to the decisions of this Court, brushed aside the suggestion that the applicability of a discharge penalty on a retroactive basis violated any concept of industrial due process. It reached that conclusion because the employees agreed, as a condition of accepting their jobs, to allow the union and employer to revoke their employment for "any other cause" in the years ahead. The opinion of the Court of Appeals failed to give recognition to the "common law of the shop" developed over the past 30 years

in the Pacific Coast longshore industry, where longshoremen have always been given a second chance when they committed infractions on the job. The opinion disregards the admonition of Mr. Justice Murphy, who warned of the possible unconstitutional delegation of authority inherent in the very concept of allowing arbitrary conduct by a collective bargaining representative. *Steele v. Louisville and Nashville R. Co.*, 323 U.S. at 208-209 (Murphy, J. concurring opinion).

The Case in a Nutshell

The instant dispute arises in an industry where all decisions about the hiring and firing of longshore employees are made by both the union and employer acting through joint committees. Longshore employment is obtained by means of "registration" on a registration list maintained jointly by the union and employer.

There are two classifications of registered, full-time longshoremen in the Port of San Francisco, Class A and Class B. Those registered in Class A are considered to have "full registration", are eligible for membership in the union, Local 10 of the International Longshoremen's and Warehousemen's Union, and have priority in being dispatched to jobs from the central dispatch hall operated jointly by the union and the stevedoring companies, Pacific Maritime Association ("PMA"). Those registered in Class B are considered to have "limited registration", are not eligible for union membership, and are dispatched to jobs after all the Class A men have been dispatched. All aspects of longshore employment in each port on the Pacific Coast are administered by a Joint Port Labor Relations Committee ("Port Committee") composed of representatives of the ILWU and PMA.

Petitioners are 51 former Class B longshoremen in San Francisco, who were registered in 1959 and, as with all new employees in any industry, they were provided with

written and oral working rules. These rules provided that they were required to devote their entire working efforts to the industry and were to be physically present in the dispatch hall 70% of each 30 day period when the dispatch hall was open.The rules also provided that drinking on the job was not allowed, and that each longshoreman was required to report his hours worked each calendar quarter under a "low man out" system of dispatch ("LMO") so that available work opportunities could be equally distributed among his fellow workers. Although neither the basic collective bargaining agreement nor any rule adopted in the Port of San Francisco specified any amount, petitioners were also told that they would be required to pay $6.00 each month to Local 10 as their "pro rata" or proportionate share of the cost of operating the dispatch hall.

Each formal and informal working rule contained a specific penalty for its infraction. If a man was found to be intoxicated on the job, he would be suspended from work for 30 days for the first incident and discharged or "deregistered" for the second incident. If he made an error of at least 10 hours in reporting his accumulated working hours under the low man out dispatching procedure, he would be suspended from work for 30 days for the first offense and six months for the second offense. A third offense would result in deregistration. Although not authorized by either the basic collective bargaining agreement or any local rule, petitioners were told that if a monthly pro rata payment was late, there would be a fine of $1.00 for each day of delinquency which was to be paid to the union.

Four years later, on June 17, 1963, the ILWU and PMA adopted standards to determine the promotion of the B men to Class A. These promotion standards provided that only those B men would be promoted who had not made 6 late pro rata payments, had not been found guilty of intoxication on any occasion and had not been guilty of a single low man out

violation. The discharge penalty was imposed for acts or infractions that had occurred years earlier and for which the penalties then in effect had already been paid. The penalties on a graduated scale in effect during the preceding four years of employment were disregarded. Those B men who met the standards were advanced to Class A. The others, including petitioners, were deregistered from the B list. In effect, the standards for promotion became the criteria for determining good standing. This new criteria was applied to past conduct and petitioners were not provided an opportunity to meet that criteria to retain their jobs.

These promotion standards were never again used to determine who would be discharged. Immediately after petitioners were deregistered, an entirely new group of 701 B men were registered. They were not required to meet the standards used to deregister petitioners.

The nature of this dispute is best illustrated by these typical examples of the circumstances under which petitioners were deregistered.

Pro Rata.

Petitioner Ulysses Hawkins worked for four years as a longshoreman and *did not violate a single rule adopted by the Port Committee.* Mr. Hawkins made the mistake of listening to and relying upon ILWU officials who told him that the only penalty for making his pro rata payments late would be a $1.00 per day fine. In fact, the Port Committee had neither fixed the amount of pro rata nor the penalty for its late payment and had not delegated that authority to Local 10. Mr. Hawkins paid late nine times in four years.[1] He paid his fines to Local 10. Local 10 retained the fines and, for 4 years made no complaint to the Port Committee about his late payments. He was paid up and

[1]Ex. A (Ex. F, 4th page).

current with his pro rata shares and delinquency payments in June 1963, when he was deregistered.

Intoxication.

On September 6, 1960, petitioner Ellis E. Graves was found guilty by the Port Committee of being intoxicated while on the job. The incident when the intoxication occurred was on July 22, 1960.[2] In conformance with the rules and penalties in existence at that time, he was suspended from work for 30 days, commencing September 6, 1960. Following his suspension, he returned to work and continued to remain working as a Class B longshoreman with the knowledge, consent, agreement and permission of respondents until June 17, 1963 when he was deregistered. Thus his deregistration occurred almost three years after the alleged intoxication incident and approximately two and three quarter years after his suspension had been completed. Up to and including June 17, 1963, the deregistration date, no official of the ILWU or PMA had informed Mr. Graves that he might lose his job because of a single intoxication incident which occurred almost three years earlier. In fact, in 1960, when he was convicted, the Port Committee warned him that if he was found guilty *again* he would be deregistered "in accordance with the Class 'B' rules".[3] He adhered to the warning and was never again involved with intoxication and engaged in no serious infractions of the rules which would have been grounds for deregistration. He devoted almost three additional years of his working life to the industry, believing he had already paid his penalty, the *only* penalty in effect and about which he had been told at the time of registration in 1959, when he was provided with copies of the intoxication rule.[4]

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[2]Ex. HC-4, p. 10.

[3]Ex. HC-4, p. 10.

[4]Ex. N. reproduced in Appendix F, A-88.

Low-Man-Out.

Petitioner Antonio Cafeterio worked four years as a longshoreman and except for a single incident in those four years, would have been advanced to Class A status. On August 12, 1962, a Sunday, his registration number was called by the dispatcher. Because of a rule of the dispatchers, B men were not required to be available for dispatch on Sundays and were not required to penalize themselves by adding hours to their accumulated time if their registration number was called and they missed a dispatch.[5] This would have been the usual procedure under the LMO rules.[6] Mr. Cafeterio relied upon this "Sunday rule". On Sunday, August 12, 1962, he did not come to the dispatch hall. His number was called; he was not there to take a dispatch, and he did not add any hours to his time when he went to work the following day, Monday, August 13, 1962.

In 1963 the ILWU and PMA record checkers did not give any recognition to the Sunday rule in Mr. Cafeterio's case. They charged him with a missing a single dispatch and claimed he violated the rules by 12 hours because of his failure to penalize himself by adding hours to his accumulated time. Assuming Mr. Cafeterio was mistaken in his reliance on the dispatcher's deviations from the written LMO rules, he would have been penalized by a 30 day suspension for the first offence under the LMO rules in existence in August 1962 when this incident occurred. Under the LMO rules as they existed on the single day of his infraction, he would have had an opportunity to protect his job by avoiding a second and third violation. He did not have a single violation of any other work rule on his record during his entire four years of employment. He did not violate the low man out rules by a single hour on any day in four years on the waterfront other

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[5]Ex. R. 773.

[6]Ex. N, Rule 10, A-87.

than the day when he was charged with missing a dispatch. He did not pay his pro rata late on a single occasion and was never called before the Port Committee for an employer complaint. He was deregistered on June 17, 1963 for his first and only infraction on the job in four years.

Following their deregistrations, petitioners applied for and obtained unemployment compensation, despite the opposition of PMA. After extensive hearings before the California Unemployment Insurance Appeals Board, the referee concluded that it was "inherently impossible to believe" that petitioners "could logically have been expected to anticipate that their acts would result in the loss of their employment".[7]

The membership of Local 10, too, concluded that the deregistration penalty could not possibly have conformed with the collective bargaining agreement. Less than three weeks after the deregistrations, the membership of Local 10, upon recommendation of its President, adopted motions to instruct the union side of the Port Committee to promote the B men who were deregistered for pro rata and LMO violations to Class A registration and to simply give the LMO violators "30 days off as per contract".[8] There was no recommendation about a penalty for late pro rata payments because the membership realized none was provided in the contract. The employers' side of the Port Committee refused to go along with these recommendations, the disagreement was taken to the next level of the grievance procedure and was abandoned by those officials of Local 10 who were instrumental in deregistering petitioners in the first place.[9]

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[7]Ex. 7, p. 13. The referee's opinion is reproduced in Appendix I to this petition and the quoted observation appears at A-117.

[8]Ex. 15.

[9]Ex. 341.

The Details

A. Petitioners' Employment and the Collective Bargaining Agreement.

When petitioners began their employment with Pacific Maritime Association in June and August 1959, as Class "B" or limited registered longshoremen,[10] they were among the 750 men selected out of some 9,000 who sought registration. Although neither the basic collective bargaining contract document, the "Pacific Coast Longshore Agreement" ("PCLA") nor any of the work rules adopted by respondents make any reference to union membership among members of the bargaining unit, by custom and practice in the Port of San Francisco, only Class A longshoremen were and are eligible for membership in Local 10. The terms "union membership" and "A registration" have been and are used interchangeably in this Port.[11]

Petitioners, ineligible for membership in the union, had no voice in the collective bargaining process throughout their four years of employment. They could not vote for or against any candidates for union office in Local 10 or the International; they could not participate in the selection of the members of the various joint ILWU-PMA committees or arbitrators, and thus were denied

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[10]Finding No. 1, R. 1491, A-29.

[11]Tr. 2218:22-2219:3 (i.e., Trial transcript, page 2218, line 22 through page 2219, line 3), 2226:9-14. "In order to be a longshoreman, a member of Local 10, you must be an 'A' member, a registered A man." Tr. 2224:12-13. Testimony of Odel Franklin, a union member of more than 30 years and holder of many union offices. Some locals of the ILWU permit B men to become union members. However, Local 10 in San Francisco has never permitted B men to become members and the International Union has done nothing about this situation. Tr. 5586:19-5588:1. It is a discriminatory practice to give priority in dispatching to union members over non-union workers. *Pacific Maritime Association v. N.L.R.B.*, 452 F.2d 8 (9th Cir. 1971). Hence, the necessity to classify longshoremen on a basis other than union membership.

meaningful participation in both the collective bargaining process and the contractual grievance procedure. They could not vote to approve or reject, directly or indirectly, the adoption of the various local work rules. Since they were not members of the union, petitioners were not eligible for the "bill of rights" of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 114(a).

B. The 1959 Working Rules.

In the course of longshore employment, working rules adopted by the Port Committee are distributed to all longshoremen. Printed rules are distributed in the dispatching hall, notices are published in Local 10 Bulletins and meetings are conducted by ILWU officials. When petitioners were registered in 1959, a B men meeting was held July 10, 1959. This was an orientation meeting to inform the 750 newly registered B men about the rules and procedures applicable to their employment. At this meeting, various documents were distributed to the B men explaining the significant working rules involved in this litigation and setting forth the applicable penalties for their infractions:[12]

i. Intoxication.

The written rules provided that if a B man was found guilty of being intoxicated on the job, the penalty for the first offense was 30 days suspension and the penalty for the second offense was mandatory deregistration.[13] The penalties for B men for drunkenness were more stringent than those applicable to A men. For the latter, the first offense was punishable with a 15 day suspension, the second offense with a 30 day suspension and succeed-

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[12]Ex. N. A copy of this key exhibit is reprinted in Appendix F, A-83.

[13]*Id.*, A-88.

ing offenses with a minimum 60 day suspension and the maximum being discretionary.[14]

ii. Pro Rata.

The B men were told by officials of both Local 10 and the International that they were required to make a pro rata payment of $6.00 per month to Local 10 for their share of the cost of operating the dispatching hall. Payment was due on the last day of the month and a $1.00 fine was assessed for each day of delinquency. The B men were never informed, either orally or in writing, by any official of the union, PMA or the Port Committee, that they could be deregistered or otherwise penalized for late payment of pro rata, other than the $1.00 delinquency fine.[15] The only penalty that applied to B men for the late payment of pro rata throughout the entire period of their employment was the $1.00 a day fine.[16]

Pro rata payments and penalties were paid directly to Local 10. The payments and penalties were identical in amount to the union dues paid by members of Local 10.[17] The relevant provision of the collective barganing agreement relating to pro rata is as follows:

> "§ 8.12
>
> "Any longshoreman who is not a member of the Union shall be permitted to use the dispatching hall only if he pays his pro rata share of the expenses related to the dispatching hall, the Labor Relations Committee, etc. The amount of these payments and the manner of paying them *shall be fixed by the Joint Port Labor Relations Committees.*" (emphasis added)

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[14]Ex. 1, §§ 17.823, 17.8231, 17.8232, 17.8233, p. 60.

[15]R. 676:14-32; Tr. 3031:14-3033:5.

[16]Tr. 2277:11-19 (testimony of Odel Franklin, official of Local 10).

[17]Tr. 2213:22-2214:9 (testimony of Odel Franklin).

Throughout the entire period of petitioners' employment, the Port Committee in San Francisco did not fix the amount of pro rata payments, the manner of paying them or the penalty for late payment. It did not authorize payment to be made directly to Local 10. Local 10 did not account to either PMA or the Port Committee for the assessments or penalties. The Port Committee never collected any of the pro rata payments from the B men. There was no Port Committee rule, formal or informal, with regard to pro rata.[18]

Within a few weeks of commencement of the trial in 1974, the staff of PMA searched the Port Committee minutes and could not locate any notation setting the amount of pro rata or any reference to the manner of making payments, to whom the payments should be made, and with what frequency they should be made.[19] There was no limit on the number of times a B man could pay his pro rata late throughout petitioners' employment.[20] Not only was there a lack of any rule authorizing or directing the payment of pro rata to the union, but there was no provision in the collective bargaining agreement itself authorizing or directing such payment.[21] The collective bargaining agreement does not provide for fines or penalties for late payment.[22] There is no evidence in the record that Local 10 ever officially adopted a motion or rule fixing the amount of pro rata to be paid by B men or the penalty for late payment.

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[18]Tr. 553:9-554:12, 554:21-25, 555:9-556:1 (testimony of Ralph R. Holtgrave, senior PMA official in San Francisco during the period of plaintiffs' registration); Tr. 1073:23-1074:2, 1079:14-23, 1080:11-17 (testimony of John Trupp, an official of PMA).

[19]Tr. 1074:3-1075:18.

[20]Tr. 1081:18-1082.3.

[21]Tr. 563:17-564:1.

[22]Tr. 565:2-6.

Petitioners' testimony that they received no notice or warning that late payment of pro rata could result in their deregistration was also corroborated by W. L. Brown, a PMA official who was in charge of coordinating the opposition of PMA to petitioners' claims for unemployment compensation. The notes of the California Unemployment Insurance Appeals Board interviewer who spoke to Mr. Brown about a petitioner deregistered for late pro rata payments show:

> "Misconduct eligibility—Mr. W. L. Brown stated in telephone conversation that *to his* [*i.e., Mr. Brown's*] *knowledge claimant never received any written notice of the rule, nor was he ever warned that he could be deregistered if he did not make timely payments.* Claimant paid his pro rata share of expenses. He admits they were not always timely, but he paid fees for untimeliness. In the absence of written notice or warning it can not be shown that the claimant was discharged for misconduct. The facts do not show wilful or wanton disregard of the employer's best interest on part of claimant."[23] (emphasis added).

The practice followed by respondents during petitioners' employment in dealing with pro rata delinquencies by the acceptance of late payments along with delinquency fines without other consequences was entirely consistent with the practice followed by Local 10 in processing dues delinquents among its membership. The record contains documented evidence of Class A longshoremen who were delinquent as much as $1,100.00 in their union dues and allowed to remain working.[24]

The effect of retroactively applying the new pro rata penalty was that petitioners were prohibited from obtain-

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[23]Ex. 10-6, p. 21, lines 7-13.

[24]R. 1050-1053.

ing other full time employment as a condition of remaining registered as B men for four years, were led to believe that they were in full compliance with the applicable rules (as they were), were discouraged from leaving the industry to find new employment at the peak of their working lives, only to be suddenly notified that they had violated a nonexisting rule a few years earlier which caused their deregistrations in June 1963. At that time, many of the petitioners who were terminated because of their late payment of pro rata, all of whom had paid their fines to Local 10, had not been delinquent for as long as two and a half years prior to their deregistrations.[25]

iii. Low-Man-Out.

The low man out system of dispatch under the PCLA provides that longshoremen with the fewest number of hours of employment in a given pay period are dispatched to work ahead of those men who have worked a greater number of hours. It is a means used to equalize work opportunity among longshoremen.[26] The dispatching procedure was essentially as follows: each longshoreman signed his work number or registration number and the accumulated hours he had worked in a calendar quarter on a "sign-in sheet",[27] the dispatchers transposed the information from the numerous sign-in sheets to a "master dispatch sheet"[28] on the master dispatch sheets prepared each day (except for Sunday and Monday when the same sheet was used), the dispatchers placed longshoremen's registration numbers in groups opposite the accumulated hours' figure represent-

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[25]Exs. 23, 24, 26, 30, 34, 36, 38, 39, FU-1, FU-2.

[26]8.42. Dispatching of men and gangs shall be under the principal of low-man low-gang, first-to-be-dispatched, except where local dispatching rules provide otherwise for dispatching of special skilled men and gangs. Ex. 1, p. 35.

[27]Ex. 432.

[28]Exs. MD-1 through MD-77.

ing the total hours worked by each man in that group; those men with the fewest hours of work were dispatched ahead of those men who had a greater number of hours. This was an honor system and if a longshoreman signed in with fewer hours than he had actually worked, he would gain an advantage over other men by obtaining an earlier dispatch to a job. This was referred to as "signing in low", "dropping hours" and "chiseling." If a man missed a dispatch because he was not in the hall when his number was called, this was called a "flop", and he was required to penalize himself by adding a certain number of hours to his accumulated time.

The low-man-out rules bearing the date of May 27, 1959, were distributed to the B men at the orientation meeting conducted by officials of the union on July 10, 1959.[29] With respect to penalties, the LMO rules provided in pertinent part:

> 'Checks' will be made each week and violators will receive the following penalties:
>
> | | |
> |---|---|
> | First offense | 30 days off |
> | Second offense | 6 months off |
> | Third offense | Cancellation of registration |
>
> • • •
>
> These are the only and official rules on the low-man-out system as revised by the Labor Relations Committee up to December 30, 1958. If new rules or changes are needed, they will be issued by the Committee.
>
> THERE ARE NO OTHER RULES[30] (emphasis from original.)

The LMO rules were originally promulgated by the Port Committee in 1951. (The panel erroneously believed the

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[29]Ex. N, 3d document, A-90.

[30]*Id.*, p. 3, A-95.

LMO system had been in effect since 1934. 617 F.2d at 1324, A-3.) Except for minor changes and some clarifications, they remained essentially unchanged in June, 1959. There were no changes in the three-step penalties from 1951 through 1959.[31] A "violation" was defined as chiseling or dropping ten or more hours at the time a violation was uncovered, even if the total number of hours was much larger.[32]

The sudden change in LMO penalties for B men in 1963 was a complete departure from the existing LMO rules and the past practices in administering those rules. The three step penalty provisions were in existence since the birth of the LMO dispatching system in 1951 and throughout petitioners' four years of employment. Without advance notice that the LMO penalties were to be changed, the first violation was suddenly made sufficient cause for cancellation of registration. The new penalty was not applied prospectively to future conduct, but retroactively to conduct which had already occurred when the penalty for the first violation was simply a thirty day suspension from work. A PMA official testified that the Port Committee merely changed the penalty for the first LMO offense to deregistration from the 30 day suspension.[33]

The low man out system of dispatch is a complicated one, as an examination of the LMO rules makes evident. Although instituted in 1951, dispatchers during the period of petitioners' employment in 1959-63 were always asked questions by longshoremen about the dispatching rules. One dispatcher testified:

> " . . . Dispatchers were always asked questions by longshoremen about the dispatching rules. Dispatchers always got questions like 'I flopped. Do I take six or

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[31]Tr. 1047:4-25 (testimony of John Trupp, a PMA official).

[32]Tr. 1048:1-16.

[33]Tr. 1153:15-1154:6.

> do I take the average?' A lot of guys don't know. We got questions like that all the time."[34]

According to the union record checkers, arithmetical errors were very common on the waterfront since the institution of the LMO system, not only among the B men, but also among the A men.[35] John Trupp, an official of PMA, corroborated the testimony of the union record checkers:

> "Down through the years, working with longshoremen, and especially with the low-man-out rules, I've met quite a large number of A men, who did not—who did not understand the rules."[36]

The union record checkers recognized that men sometimes drop an hour or two one day and then add the hours the next day. This was treated as a mistake. Their guiding principle was not to punish men for mistakes, but as stated by one union official, ". . . to catch chiselers. We looked for a pattern of chiseling."[37]

Harry Bridges, International President of the ILWU, recognized the industry practice of allowing longshoremen leeway in adhering to these rules. He testified that the first time a man was caught violating the LMO rules, he was not even given the 30 day penalty but was simply given a warning. The purpose of the warning was to give the man an opportunity to change his conduct so that he could save his job and be a good union person.[38]

The uncontradicted and unqualified testimony of the dispatchers, union record checkers, PMA official John

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[34]R. 955:5-8.

[35]Tr. 4468:21-4869:12.

[36]Tr. 1787:21-24.

[37]Tr. 4871:20-4872:25.

[38]Tr. 5568:14-5569:20.

Trupp and I.L.W.U. International President Harry Bridges stands in sharp contrast to the *ad hominem* comment of the Court of Appeals that "an individual caught more than once chiseling on an honor system does not present a convincing portrait of one who will improve the work force. This is particularly true where, as here, there was little apparent chiseling in the entire group of Class B workers." 617 F.2d at 1321, A-23. Unfortunately, the panel was apparently more influenced by the makeweight arguments of respondents than the realities of the workplace. If the panel was correct, respondents' officials were wrong. The B men were given only a random record check of a single 30 day period in four years for LMO violations to determine who would be promoted and who would lose their jobs. This hardly establishes that the remaining B men were without blemishes over a four year period of employment.

There was never a longshoremen, before or after 1963, either Class A or Class B, who was deregistered for violating the LMO rules for the first violation in the amount of 10 hours or more except for the B men who were deregistered in June of 1963.[39]

C. Petitioners' Deregistrations in 1963.

In the Spring of 1963, respondents decided to promote some B men to Class A and to deregister the others. The standards appear only in summary form in the record and provide, in pertinent part, that any Class B longshoreman would be ineligible for advancement to Class A if he had 10 or more hours of low-man-out violations, had paid his pro rata late eight or more times or six or more times with an otherwise blemished record, or who had been the subject of one employer complaint for intoxication.[40]

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[39]Tr. 1154:22-155:1.

[40]617 F.2d at 1324, A-4, Ex. 408, reprinted in Appendix H.

On June 17, 1963, the Port Committee notified 448 Class B longshoremen that they had been advanced to Class A and notified 78 Class B longshoremen that they had been deregistered.[41] The petitioners were among the deregistered longshoremen who were deregistered for failure to meet one or more of the standards.

Once the 1963 promotion standards were adopted, they were applied to conduct which had already occurred and a PMA official testified that there was nothing further that the men could do to protect their jobs.[42] The conduct made grounds for deregistration in 1963 was not grounds for deregistration when the infractions occurred,[43] but were merely subject to nominal fines or short suspensions from work. In the case of pro rata and intoxication, the fines had already been paid and the suspensions imposed and completed. All petitioners were in good standing as of June 17, 1963. 617 F.2d at 1324, A-5.

The decision of the Port Committee on the merits of petitioners' violations of the standards was final under the collective bargaining agreement in absence of disagreement between the ILWU and PMA.[44] After their deregistration, petitioners were no longer eligible for longshore employment.

Less than three weeks after petitioners were deregistered by the Port Committee, the membership of Local 10 recognized that petitioners were not guilty of any conduct warranting deregistration under the collective bargaining agreement. The membership adopted two resolutions which were proposed by its President and adopted overwhelmingly:

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[41]Ex. 11, Finding No. 81, R. 1514-15, A-53.

[42]Tr. 723:16-724:1.

[43]Tr. 724:2-726:4.

[44]Tr. 757:16-24, 759:5-9; 617 F.2d at 1328, A-12.

President James Kearney made the following recommendation which was overwhelmingly adopted as a motion and instructions to the Union Side of the Local Labor Relations Committee: An additional motion also carried:

M/S/C That all "B" Men Who Are on Appeal and Who Have Not Been Promoted Solely Because of Low-Man-Out Violations Shall Be Given 30 Days Off As Per Contract and Promoted to "A" Registration.

M/S/C That the Labor Relations Committee Be Instructed That All "B" Men Who Are on Appeal and Have Not Been Promoted Solely Because of Pro-Rata Violations Shall Be Re-Registered and Moved to "A" Registration.[45]

Local 10 submitted its motions to the Port Committee, where PMA took them under advisement. The Port Committee reconvened three days later with PMA's attorney present. When PMA disagreed with the Union's motions, the disagreement was referred to the next step in the contractual grievance procedure, the Area Labor Relations Committee.[46] With new officials acting in behalf of the Union, the Union representatives disregarded the instructions of Local 10's membership to treat petitioners under the terms of the contract as it existed during petitioners' entire period of employment. Instead, they agreed with PMA to allow the Port Committee to simply determine if petitioners had violated the 1963 promotional standards during the preceding four years.[47]

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[45]Ex. 15.

[46]Ex. 261, pp. 13-14.

[47]Ex. 341.

In late 1963, many of the petitioners who were deregistered for late payment of pro rata and LMO violations applied for unemployment compensation. PMA filed objections and extensive hearings were held before a referee of the California Unemployment Insurance Appeals Board. After twenty-seven sessions of contested hearings,[48] petitioners obtained their unemployment insurance. Upon review of the testimony of petitioners, PMA officials and ILWU officials, when the facts were fresh in the recollections of all parties, the referee wrote an opinion which is reproduced in Appendix I to this petition. In pertinent part, the referee concluded:

> After analyzing all of the facts, it is inherently impossible to believe that the claimants [petitioners before this Court] herein could logically have been expected to anticipate that their acts would result in the loss of their employment. In brief, the claimants did not embark on a course of action which they knew or should have known would result in the loss of their employment. As a matter of fact, over the years, a pattern of behavior was established which was condoned and allowed by the employer, the union and the joint Port Labor Relations Committee. This pattern was such that violations were handled according to the rules and provisions of the contract and memorandums [sic] and each man continued as a limited registration longshoreman.[49]

The promotional standards and penalties applied against petitioners in June of 1963 were never again used as a means for deregistering a Class B longshoreman. A new group of 701 B men were registered by the Port Committee on October 4, 1963.[50] For the very first time, the Port Committee adopted a pro rata rule providing that

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[48]The transcripts of these hearings are in the record as Exs. 10-3 through 10-24.

[49]Ex. 7, pp. 13-14, A-117-118.

[50]Ex. 276.

each B man pay $8.00 monthly *to the Port Committee* and that collection would be by payroll deduction.[51] The two step intoxication rule was readopted.[52] The LMO rules were changed so that a B man would not be deregistered unless he had erred in at least 16 hours within a 30 day period.[53]

PROCEEDINGS BELOW

Petitioners filed suit in the District Court against their certified collective bargaining representative, the International Longshoremen's and Warehousemen's Union and its San Francisco constituent local, Local 10, and their employer, Pacific Maritime Association to regain their jobs. They prayed for promotion to Class A and/or reinstatement in Class B, along with their resulting damages. Jurisdiction was invoked under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185 and 28 U.S.C. §§ 1331(a) and 1337(a). They alleged the union breached its duty to provide fair representation by agreeing to the retroactive application of the discharge penalty, that the employers joined in and collaborated with the union in the breach of its duty, and that the deregistrations were in conflict with the terms of the collective bargaining agreement.[54]

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[51]Ex. 275.

[52]Ex. 274, p. 2.

[53]Tr. 1193:11-1195:15.

[54]The District Court originally granted summary judgment because, *inter alia*, it considered that the National Labor Relations Board had exclusive jurisdiction over the dispute. The Court of Appeals reversed and ordered a trial. *Williams v. Pacific Maritime Ass'n*, 384 F.2d 935 (9th Cir. 1967), *cert. denied*, 390 U.S. 987. Thereafter, the District Court dismissed individual union officials who had been named as defendants and petitioners' claims for punitive and exemplary damages. This latter order was affirmed. *Williams v. Pacific Maritime Ass'n*, 421 F.2d 1287 (9th Cir. 1970).

After a six month trial of the first phase of a bifurcated trial on the issue of liability only and the submission of a 293 page stipulation of uniform testimony,[55] the District Court xeroxed and signed respondents' proposed findings of fact and conclusions of law and entered judgment in their favor. The xeroxed findings and conclusions determined that petitioners failed to exhaust internal contractual remedies and that their deregistrations were not the result of the union's breach of its duty to provide fair representation or breach of the collective bargaining agreement.

The Court of Appeals rejected the District Court's conclusion that petitioners were barred from pursuing their claims because of their purported failure to exhaust internal contractural remedies. 617 F.2d at 1327-30, A-11-16. On the merits, the panel considered petitioners' four years of full time employment to be a "trial period". It found that: there was no breach of the duty to provide fair representation or breach of the collective bargaining agreement because petitioners knew that they were to obey "all the rules"; respondents had the authority to deregister Class B longshoremen for "any other cause" which could be defined in any way or manner decided by respondents at the time of their choosing; petitioners agreed, as a condition of obtaining a job when they signed their employment applications, that their registrations "may be revoked in accordance with such agreements and such rules in effect were hereafter to be agreed upon or adopted" by respondents; and that the validity of the pro rata promotion standard was established by the National Labor Relations Board in a proceeding 14 years earlier involving other deregistered B men. 617 F.2d at 1330-34, A-16-24.

The Ninth Circuit essentially concluded that petitioners agreed, as a condition of employment, to allow respondents

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[55] R. 670.

to remove them from their jobs at any time for any reason. In reaching this conclusion, the panel failed to take any notice of the past collective bargaining practices of the industry during the previous 30 years and decided that the applicable penalties for infractions of the working rules in existence for four years of petitioners' employment were of no consequence.

REASONS FOR GRANTING THE WRIT

In reaching its decision, the Ninth Circuit departed from the teachings of this Court and created needless conflicts with the decisions of other circuits. The panel failed to recognize that the unfair representation opinions of this Court turn on the concept of industrial due process. Put another way, they involve simple fairness. In situations where certain conduct has been tolerated in the past, any possible definition of fairness requires that a change of policy not be imposed until after the employer gives notice that future violations will not be tolerated. *See* Summers, *The Individual Employee's Rights Under the Collective Agreement: What Constitutes Fair Representation?*, 126 U.Pa.L. Rev. 251, 273 (1977). The Court of Appeals disregarded this fundamental principle.

The Ninth Circuit also overlooked the distinction between petitioners' separate claims for promotion to Class A and alternatively for reinstatement in Class B. Their claim that it was unfair to apply a promotion standard as a discharge standard was almost totally overlooked. The panel apparently saw nothing wrong with an automatic overnight change in status from four years of good standing to a dischargeable status.

The "common law of the shop" in the Pacific Coast maritime industry has long provided for giving a longshoreman a second chance when he violates a rule of the job. The graduated penalties adopted by respondents recognized this tradition. The Court of Appeals did not accord

any respect to this tradition as it completely abrogated its duty to make an independent examination of the record.

I. The Court of Appeals Disregarded the Teachings of this Court and Needlessly Contributed to the Existing Conflicts Among the Circuits in Fair Representation Cases.

In *Steele v. Louiseville & Nashville R. Co.*, 323 U.S. 192, 202 (1944), this Court held that a labor organization "chosen to represent a craft, is to represent all its members, the majority as well as the minority, and it is to act for and not against those whom it represents". The opinion went on to compare the duty imposed upon the statutory collective bargaining representative to equally protect the interests of members of the craft with the duty imposed by the Constitution upon the legislature to provide equal protection to the interests for whom it legislates. *Ibid.* In *Vaca v. Sipes*, 386 U.S. 171, 177 (1967), the Court further defined the duty, by then extended beyond the overt form of racial discrimination involved in *Steele*, as barring "arbitrary conduct" in the collective bargaining process and in the enforcement of the resulting contract. From its initial recognition, "the duty of fair representation has stood as a bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law." *Id.*, 386 U.S. at 177. The policy enunciated in *Steele* and *Vaca* was repeated and reaffirmed most recently in *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 564 (1976) and *Electricians v. Foust*, 442 U.S. 42, 46-47 (1979).

The courts of appeals have generally adhered to the "arbitrary" standard in unfair representation cases, *Griffin v. International U., United Automobile, etc.*, 469 F.2d 181, 183 (4th Cir. 1972); *Jones v. Transworld Airlines, Inc.*, 495 F.2d 790, 798 (2d Cir. 1974); *Ruzicka v. General Motors Corporation*, 523 F.2d 306, 309-10 (6th Cir. 1975), *rehear-*

ing denied, 528 F.2d 912 (1975); *Retana v. Apartment, Motel, Hotel and El. Op. U. Loc. No. 14,* 453 F.2d 1018, 1023 (9th Cir. 1972). The Third Circuit continues to interpret the rule of *Vaca* as requiring that the union act with a bad faith motive. *Medlin v. Boeing Vertol Co.,* 620 F.2d 957, 961 (3d Cir. 1980). The Seventh Circuit also demands a showing of intentional, invidious conduct, and holds that "The plaintiff must show that the union's conduct was intentional, invidious, and directed at that particular employee." *Cannon v. Consolidated Freightways Corp.,* 524 F.2d 290, 293 (7th Cir. 1975); *Melendy v. United States Postal Service,* 589 F.2d 256, 258 (7th Cir. 1978).

The Eighth Circuit made an effort to provide further guidance on the standard of fair representation under *Vaca,* and considers "arbitrary and capricious" to mean "an act done without principle or an act not done according to reason and judgment" and requiring judgment "on the basis of whether the act complained of is reasonable or unreasonable under the circumstances." *Foust v. International Broth. of the Elec. Workers,* 572 F.2d 710, 714 (10th Cir. 1978), *rev'd in part on other grounds,* 442 U.S. 42 (1979). It also holds that where the union makes no effort to evaluate individual capabilities of members of the bargaining unit, there could be a violation of the union's duty to provide fair representation. *Petersen v. Rath Packing Company,* 461 F.2d 312, 315 (8th Cir. 1972).

The crucial element in petitioners' breach of duty claim is that they were not told the specific penalties to be applied in case of infractions of the rules and certainly would not have accepted their employment if they knew they were required to maintain a perfect record in order to keep their jobs. The Ninth Circuit apparently saw nothing wrong with such a requirement. Surprisingly, in a case decided prior to the case at bench, another panel of the Ninth Circuit determined that a breach of duty occurred when the union failed to explain the rights and duties under

the contract to members of the bargaining unit, even though the complained of action did not involve breach of a specific provision of the collective bargaining agreement. *Retana v. Apartment, Motel, Hotel and El. Op. U. Loc. No. 14, supra,* 453 F.2d at 1023. The Third Circuit, in a case strikingly similar to the case at bench, held that the union breached its duty where it failed to advise the plaintiff of the exact penalty which could be imposed for not paying an increase of $9.75 in his union dues over a period of three months, so that he could act to prevent these occurrences in the future and to take all necessary steps to protect his job. *Brady v. Trans World Airlines, Inc.,* 401 F.2d 87, 99 (3d Cir. 1968) *cert. denied sub nom. International Ass'n of Machinists v. Brady,* 393 U.S. 1048.

While purporting to apply the "bad faith or arbitrariness" standard (617 F.2d at 1330, A-17), the panel actually departed from it. The panel did not point to any explicit evidence that petitioners were told they could lose their jobs for the first LMO or intoxication offense, either at the time the incidents occurred or at any time thereafter. It was equally unable to find any evidence that any petitioner, or any one else on the waterfront among labor or management, considered late payment of pro rata to be a discharge offense. There is no dispute about the authority of the union and employer to establish criteria to determine eligibility for promotion. Even if the 1963 promotion standards were fair and reasonable for that purpose, they would not be a fair and reasonable basis for discharging those employees who were not promoted. Discharge "for cause" means for commission of acts to the extent that they bear a prescribed discharge penalty. No such prescribed penalty appears anywhere in the record of this case until June 17, 1963.

The panel's decision is in direct conflict with the principles of fairness underlying the fair representation decisions of the Court as well as the application of that

principle in the Third Circuit case of *Brady v. Trans World Airlines, Inc.* and the Ninth Circuit's own decision in *Retana v. Apartment, Motel, Hotel and El. Op. U. Loc. No. 14.*

The Ninth Circuit held in the instant case that the contract could be amended and adversely affect the rights of petitioners. This precise conclusion was the view of the concurring opinion in *Humphrey v. Moore,* 375 U.S. 335, 353-55 (1964) but was rejected by the majority of the Court. The Ninth Circuit also placed itself in conflict with the Third Circuit when it held that petitioners' rights under the collective bargaining agreement could be modified by creating dischargeable offenses where none existed previously. In *Price v. International Bro. of Teamsters,* 457 F.2d 605, 610 (3d Cir. 1972), the Court interpreted the congressional policy of our labor laws to have the "implicit assumption" that "absent appropriate amendment of the labor contract, there could be no changes in the agreement that would abrogate rights contained in it. While modification could add to or explain provisions, it could not take away any rights already there." Although in conflict with the majority opinion in *Humphrey v. Moore* and the Third Circuit view, the opinion of the Ninth Circuit appears to conform with that of the Fourth Circuit where it was held that the union and employer may modify an agreement and thereby effect vested rights. *Ekas v. Carling Nat. Breweries, Inc.,* 602 F.2d 664, 667 (4th Cir. 1979), *cert. denied,* ..... U.S. ....., 100 S.Ct. 669.

Fundamental fairness requires that employees be allowed to rely on existing working rules until changed. Only prospective application of new penalties would be compatible with any concept of industrial due process. The rights involved arise from federal law and must be applied uniformly. The authority of unions and employers to adversely affect these rights in the course of collective bargaining should be clarified by this Court.

II. The Union and Employer Cannot Condition Employment Upon a Waiver of the Statutory Right to Fair Representation And The Right To Demand Compliance With the Collective Bargaining Agreement.

In support of its recognition of the unlimited authority of a bargaining representative to assist in terminating workers at their whim for "any other cause", the Court of Appeals could locate two sources in the mammoth record of this case. The first was Section 9(a)(xi) of the document adopted by respondents entitled the "1958 Memorandum of Rules Governing Registration and Deregistration of Longshoremen in the Port of San Francisco." This latter document provided that a Class B longshoreman may be deregistered "for cause" by the Port Committee "in accordance with such rules or uniform procedures as may be established or followed by the Committee if the Committee finds . . . any other cause". The second was a section in the employment application signed by petitioners in 1959, where each applicant acknowledged that Class B registration would "be subject to agreements between the PMA and ILWU . . . and to rules with respect to registration and deregistration established by said party; I understand that . . . registration may be revoked *in accordance with such agreements and such rules now in effect or hereafter to be agreed upon or adopted* . . ." 617 F.2d at 1331-32, A-19-20 (emphasis by the Court). It takes little imagination to see the potential for abuse inherent in these powers respondents sought to delegate to themselves.

No one explained to any of the petitioners that by signing the employment application and agreeing to their deregistration for "any cause" or "any other cause", they would waive their rights to have the ILWU provide them with fair representation, to demand that respondents comply with the collective bargaining agreement, or any other legal rights to which they were entitled.[56] The applications

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[56]R. 676, 6-13, 685:21-31.

were mass-produced by the thousands and submitted to petitioners on a take-it-or-leave-it basis. There is no explicit reference to changing the work rules and penalties without prior notice, or to applying a discharge penalty where none existed previously. Petitioners did not agree, in advance, to surrender their jobs for the first infractions of the LMO or intoxication rules or the nonexistent pro rata rule.

This Court long ago held that individual contracts of employment could not be construed as a "waiver of rights" under a collective bargaining agreement. *J. I. Case Co. v. Labor Board,* 321 U.S. 332, 336 (1944). At most, the employment applications were contracts of adhesion which are carefully scrutinized by the courts for the purpose of avoiding provisions found to be unconscionable or the result of over-reaching. 6A Corbin on Contracts, § 1376, p. 21 (1962 ed.) The Court has recognized that contracts contrary to public policy are invalid. *Bisso v. Inland Waterways Corporation,* 349 U.S. 85, 90 (1955). Since the waiver of statutory rights as a condition of employment would be contrary to national labor policy at a minimum and ambiguous at most, any such waiver would have to be construed against respondents and the interpretation adopted by the Court of Appeals.

Only one other court appears to have dealt with a union requirement that an employee maintain an absolutely clean record. In *Archie v. Chicago Truck Drivers, etc.,* 585 F.2d 210, 218 (7th Cir. 1978), the Court considered it to be a breach of duty to provide fair representation where the union required the plaintiff to sign a statement asking for reinstatement on condition that there be "irretrievable termination" of his employment if he made any error in checking freight for a period of one year. This should be contrasted with the finding of the District Court and accepted by the Court of Appeals in the present case that petitioners knew they were required to maintain "an absolutely clean record" in order to retain their jobs.[57]

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[57] Finding No. 34, R. 1500, A-39.

III. A Decision of The National Labor Relations Board Cannot Preclude The Federal Courts From A Full Examination Of Petitioners' Claims.

The panel declined to consider the uncontradicted evidence that the pro rata rule was nothing more than an informal practice and that it was invoked in such a way as to deregister a large number of B men for reasons unauthorized by any contractual provision of the collective bargaining agreement. Rather than resolving this crucial issue on its substantive merits, i.e., did the application of this promotional standard deprive petitioners of fair representation and did it result in breach of the collective bargaining agreement, the Court of Appeals simply referred to an earlier decision of the National Labor Relations Board which held that ". . . it is not irrational or capricious to believe that one who is lax in meeting his obligations to his fellows to share the costs of the dispatching hall may not develop into a conscientious and reliable worker. *Pacific Maritime Ass'n* (Johnson Lee), 155 NLRB 1231, 1234 (1955)." 617 F.2d at 1333, A-23.

The federal courts are not and should not be precluded from examining an issue resolved by the Board years earlier when different legal principles and standard applied. The *Johnson Lee* case involved five other Class B longshoremen who were deregistered with petitioners. After the filing of unfair labor practice charges, a complaint issued, findings were made by a trial examiner and later reversed by the Board. Review of the Board's final order was not sought in the Court of Appeals by the charging parties as authorized by § 10(f) of the Labor Management Relations Act, 29 U.S.C. § 160(f). *Auto Workers v. Scofield*, 382 U.S. 205, 210 (1965).

The Ninth Circuit's reliance on the NLRB decision poses a grave risk of frustrating the basic purposes underlying the fair representation doctrine. The Board's decision was not concerned with whether or not there was a breach of the duty to provide fair representation, but simply with whether or not there was an unfair labor practice with

respect to the pro rata standard. The Board did not consider any claim of breach of contract. As stated by the union attorney during the course of proceedings before the trial examiner, the sole issue was whether or not the pro rata standard was in conflict with §§ 8(a)(1) and 8(b)(1) of the LMRA:

> "We are not here concerned with a general cause of action that might or might not exist some place else. *The statutory scheme we are concerned with relates to discrimination if it exists for the purpose of encouraging or discouraging membership in a union or participation in union activities.*
>
> This is so elementary, that the Trial Examiner is so familiar with it, I don't have to burden the point." (Emphasis added).[58]

The standard applied by the Board was entirely different from that invoked by the courts in fair representation cases. The decision and order of the NLRB was concerned with the "true purpose or real motivation" of the union. 155 NLRB at 1233. The Board referred to the pro rata standard as a "credit standard" and considered that " a person's credit standing which reflects upon his character, may well be reasonably related to his performance as a responsible employee". *Id.* at 1234. Assuming that an unfair labor practice is exactly the same type of unlawful conduct as breach of the statutory duty to provide fair representation, there has been a profound change in the law subsequent to the Board's decision. It is no longer necessary to establish the "true purpose or real motivation" of the union. A complaining party need not establish that the conduct of the union was a pretext for an improper motive. *Vaca v. Sipes* held that the standard applied in fair representation cases is with whether or not the union's conduct is arbitrary, discriminatory or in bad faith. 386 U.S. at 190.

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[58]Ex. J, 29:7-17.

Consideration of a person's "credit standing" was only a legal argument and not a matter having a factual basis, for any consideration of a B man's "credit standing" was unknown to Ralph R. Holtgrave, senior PMA official in San Francisco at the time the promotion standards were adopted in 1963.[59] Recognition of an employee's "credit standing" as a condition to maintaining employment would be contrary to public policy. *See Stewart v. Travelers Corporation*, 503 F.2d 108, 113, 114 (9th Cir. 1974).

Finally, even if the issues decided by the NLRB and presented by petitioners in the case at bench were identical, traditional rules of collateral estoppel would not apply. The proceedings before the trial examiner extended over a period of only three days while the case at bench had a six months trial, a 293 page stipulation of uniform testimony and approximately 1,000 exhibits. Petitioners were not parties to the Board proceedings and did not participate in them. Their potential remedy before the Board was uncertain in 1963 and they presented many issues in court which were not presented to the Board. More importantly, there has been a change in the legal standard of fair representation brought about by this Court's decision in *Vaca v. Sipes*. All of these factors militate against applying the doctrine of collateral estoppel. *Restatement (Second) of Judgments*, § 68.1 (Ten. Draft No. 1, 1973).

IV. The Findings Below Are The Result of Obvious and Exceptional Error, Because The Court of Appeals Failed to Make An Independent Review of the Record.

The panel's opinion gives every indication that it failed to make an independent review of the record which is remarkably free of conflict. Perhaps the basic misunderstanding of the record by the panel was its consideration of petitioners as "provisional" or "probationary workers". 617 F.2d at 1330, A-17. Petitioners were not temporary, casual, provisional or probationary workers of any kind.

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[59]Tr. 569:9-73:1.

None of the joint ILWU-PMA committees considered them to be anything other than full time, registered longshoremen, and there is no document which described them with the labels fixed by the panel.

PMA officials would hardly agree with the Court of Appeals. One PMA witness testified that Class B longshoremen were considered full time employees.[60] They were sometimes required to be available for work in the dispatching hall seven days a week. Respondents did not permit B men to obtain other employment and they could not moonlight while on the registration list.[61] Four years of employment under these conditions flies directly in the face of any "probationary" or "provisional" characterization of petitioners' status.

The Court of Appeals went on to state its observation that the "record establishes, moreover, that even before the 1963 standards for admission to Class A status were negotiated, the appellants [petitioners before this Court] understood that the actions for which they ultimately were deregistered constituted misconduct . . . warnings to longshoremen not to engage in such misconduct abound in the record". 617 F.2d 1332, A-21. The Court was dead wrong about the record. Petitioners were not deregistered for "misconduct" but for failure to satisfy the explicit promotion standards. There is no evidence in the record that Class B longshoremen received any "warnings" that they would lose their jobs for a single violation of the working rules incorporated into the promotion standards. A senior PMA official testified that in this case, to be deregistered, a man had to be disqualified under one of these standards.[62] General misconduct, however defined elsewhere, was not involved in the loss of petitioners' jobs.

This Court has recognized that it may review findings of fact under the "two court rule" if there is "a very obvious

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[60]Tr. 1836:22-24.

[61]Tr. 1837:5-1838:1.

[62]Tr. 518:12-17; 521:9-522:12.

and exceptional showing of error". *Graver Tank & Mfg. Co. v. Linde Aire Prod. Co.*, 336 U.S. 271, 275 (1949); *Berenyi v. Immigration Director*, 385 U.S. 630, 635 (1967). Unlike the trial judge in the *Graver Tank* case, the district judge in the case at bench did not write a "careful and succinct opinion". Despite this difference, the Court may, and has, reviewed factual determinations where warranted. *U.S. v. Ceccolini*, 435 U.S. 268, 273, 279-80 (1978). A mistaken view by the Court of Appeals of the evidence in the record is recognized as a proper circumstance to allow this Court to reconsider the record where there is no evidence to support critical findings. *Rose v. Mitchell*, 443 U.S. 545, 569-72 (1979). The Court did not hesitate to make an independent determination of the sufficiency of the evidence to support the jury verdict in *Humphrey v. Moore*, 375 U.S. at 348-51. This is a minimum requirement in fair representation cases.

The panel's confusion about the record is best illustrated by its comments on pro rata. It completely misread the record when it said: "Longshoremen were admonished several times against late payment or nonpayment of pro rata charges, most notably in letters sent to each worker applying for Class B status." 617 F.2d at 1332, A-21. The fact of the matter is that there is absolutely nothing in the record to indicate the Class B longshoremen were admonished at all against late payment under the nonexistent pro rata rule. Those petitioners deregistered for late payment of pro rata lost their jobs for *late* payment, not *non*payment. The panel's reference to "letters sent to each worker applying for Class B status" refers to Exhibit CL, reproduced in Appendix G to this petition, and provides in pertinent part that "failure to make such [pro rata] payments . . ." may be grounds for deregistration. But none of the petitioners before this Court were deregistered or penalized in any way during their four years of employment for failure to make pro rata payments. The uncontradicted testimony

of PMA officials is in direct conflict with the panel's interpretation of the "letters sent to each worker applying for Class B status". John Trupp, an official of PMA, testified that he could find nothing in those letters which specified that a Class B longshoreman could be deregistered for late payment of pro rata. He further testified that the petitioners who were charged with violating the nonexistent pro rata rule were deregistered for *late* payment, not *non*payment.[63] W. L. Brown, another PMA official, stated that petitioners never received *written notice* or any kind of warning that they could be deregistered for late payments.[64]

We have already referred to the motions of the membership of Local 10 indicating that the membership knew nothing about the deregistration penalty for late payment of pro rata. There is simply no evidence in the vast record of this case to even suggest that petitioners or anyone else on the waterfront in San Francisco knew that any late payments could cost a longshoreman his job.

Perhaps the most explicit explanation of what petitioners were told about pro rata was the explanation of petitioner Cleo Love, who had an opportunity to explain this very point to Harry Bridges, International President of the ILWU during a grievance hearing:

> Mr. Love: . . . There's one more question. I'd like for someone to tell me why they accept the money and take my job for the same thing that I'm supposed to be paying for. Once you pay that penalty, you are clear. Then years later I lose the same job that they say I paid the penalty for.[65]
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> • • •
>
> Mr. Bridges: Were you ever present at a Special B men's meeting that you were asked to attend and was called officially by the Local and they advised all B men to show up?

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[63]Tr. 1824:25-1826:12.

[64]Ex. 10-6, p. 21, lines 7-13.

[65]Ex. AL, 54:3-8.

Mr. Love: Yes, I was.

Mr. Bridges: How many of them?

Mr. Love: I think we had only two or three. I was at each one of them.

Mr. Bridges: Do you recall me at those meetings telling the B men that their records were being watched and they would count against them eventually.

Mr. Love: Yes, I do. If you notice my record, I don't have a black mark on my record. They can't say I was drunk on the job, talking nasty to the boss, refuse to work, not anybody. You can't find anything on the record.

Mr. Bridges: At those meetings I talked to the B men about what could eventually count against them to be an A man. Do you recall me talking about them being promoted?

Mr. Love: Yes.

Mr. Bridges: Do you recall anything I said about paying the costs of the hiring hall?

Mr. Love: Yes, I do.

Mr. Bridges: You don't recall that I indicated or said that people who didn't pay this it would count against them eventually?

Mr. Love: Yes. You said that people that didn't pay it would count against you. I'm not one of the guys that didn't pay. But I paid late. *And you didn't say in any of your talks to us that paying late we would lose our jobs.* You said that people that don't pay it would count against you". (emphasis added)

Mr. Ernst [Attorney for PMA]: Anything more? We should try to take care of those three clerk cases, Los Angeles—Seattle, if we can.[66]

* * *

Mr. Love: Well, there's no rule in the contract that says you'll lose your job for late payments.

Mr. Bridges: The rules in the hiring hall are made at the Local.

Mr. Love: All I know, Mr. Bridges, is that rules that we seen in the office over there, what the officials said, and *the officials never said that you would lose*

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[66] *Id.*, 55:18-56:22.

your job for late paying dues. You lose your job if you don't pay your dues. (Emphasis added)

Mr. Bridges: If you were talking about a license tag, you eventually lose your license to drive even though you pay fines and so forth. If you get enough traffic violations, you know that you lose your license and insurance. There are a lot of people without insurance. It's like truck drivers without a license to drive. They can't work either.

Mr. Love: Like you say, they lose their license. They don't take it away permanently. They may give 30 days suspension. What they did here is they took the job completely with no suspension—no nothing.[67]

Mr. Bridges did not respond, and respondents did not produce a single witness or a single piece of evidence to contradict Mr. Love. As pointed out above, two PMA officials actually corroborated his testimony. The panel made a grievous error in its reading of the record.

V. Respondents Breached the Collective Bargaining Agreement By Deregistering Petitioners Without "Good Cause" and in Violation of the "Common Law of the Shop".

In conceding arbitrary authority to the PMA and ILWU to discharge a member of the bargaining unit for an amorphous "any other cause" and in disregarding the "common law of the shop", the Ninth Circuit placed yet another part of its decision in conflict with the decisions of other circuits as well as this Court.

The jurisdiction of federal courts to hear claims of individual employees for breach of collective bargaining agreements was finally determined in *Smith v. Evening News,* 371 U.S. 195 (1962). Where an employee is not at fault, he cannot be disciplined, and a discharge for cause means "good cause". *Day v. United Automobile, Aerospace & Agr. Implement Workers of America, Local 36,* 466 F.2d 83, 90-92 (6th Cir. 1972). The District Court found that the ILWU-PMA contract provided that a B man could be de-

[67] *Id.*, 59:4-21.

registered by respondents at their sole discretion "for any cause".[68] An almost identical contention was rejected by the Court in *Boone v. Armstrong Cork Company,* 384 F.2d 285, 291 (5th Cir. 1967):

> "It is true that whatever rights an employee subject to a collective bargaining agreement possesses limiting his employer's right to discharge him must find their source in the agreement, [citations] *but a restriction on an employer's right to discharge at will may be implied.*" (emphasis supplied).

Throughout petitioners' four years of employment, they were in good standing, as conceded by the Court of Appeals. 617 F.2d at 1324, A-5. Throughout these four years, they had committed no infractions warranting dismissal under any of the terms of the basic agreement or applicable working rules. If "good cause" is an implied condition of the collective bargaining agreement, then the deregistrations of petitioners were in violation of the contract because there was no "good cause" for terminating them. However, only if "any other cause" is to be recognized as authorizing a new form of discipline to be imposed many years after the infractions occurred, do the deregistrations of petitioners not violate the contract.

The common law of the shop of this industry during the past 30 years never authorized deregistering a longshoreman unless there was a specific contractual provision or working rule authorizing that harsh penalty at the time the infractions occurred. This aspect of the common law of the shop was recognized by the two motions of Local 10 calling for petitioners to be disciplined only "as per contract" and thereafter reinstated and registered in Class A. The practices of the PMA and ILWU in administering the various provisions of the contract and working rules constitute part of the collective bargaining agreement.

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[68]Finding No. 23, "In keeping with the nature of the status of the limited registration Class B longshoremen, the contract provided that he could be deregistered for any cause." R. 1497, A-36.

Lax enforcement of the rules, graduated penalties and understandings of human frailties have long characterized Pacific Coast longshore employment. Harry Bridges, International President of the I.L.W.U. and its leader for over 30 years, told the trial court that a longshoreman was only given a warning for the first low man out violation.[69] John Trupp, a longtime official of PMA, told the trial court that the custom in the industry was to give rule violators a second chance for being intoxicated on the job[70] and for low man out violations.[71] The penalty information provided to petitioners was part and parcel of this tradition. It was ignored by Court of Appeals.

> "[T]he industrial common law, the practices of the industry and of the shop—is equally a part of the collective bargaining agreement although not expressed in it." *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581-82 (1960).

Violation of the common law of the shop constitutes violation of the collective bargaining agreement. The Ninth Circuit declined to follow this well established principle.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

ARTHUR BRUNWASSER
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Attorneys for Petitioners

September 23, 1980

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[69]Tr. 5568:14-5569:20.

[70]Tr. 1833:10-14.

[71]Tr. 1834:23-25.

80-499

No.

Supreme Court, U. S.
FILED
SEP 29 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

GEORGE R. WILLIAMS, et al.,
Petitioners,

VS.

PACIFIC MARITIME ASSOCIATION, a non-profit corporation, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an unincorporated association, and I.L.W.U. LOCAL No. 10,
Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Appendix A

George B. WILLIAMS et al.,
Plaintiffs-Appellants,

v.

PACIFIC MARITIME ASSOCIATION
et al., Defendants-Appellees.

No. 77-1398.

United States Court of Appeals,
Ninth Circuit.

Feb. 8, 1980.

Appeal from the United States District Court for the Northern District of California.

Before DUNIWAY and KENNEDY, Circuit Judges, and BONSAL,* District Judge.

KENNEDY, Circuit Judge:

This appeal is from an order of the district court dismissing several claims due to appellants' failure to exhaust contractual remedies, and finding that appellees Pacific Maritime Association (PMA) and the International Longshoremen's and Warehousemen's Union (ILWU) and ILWU Local 10 did not breach a duty of fair representation owed to appellants. We have jurisdiction under 28 U.S.C. § 1291. We disagree with the trial court on the initial question of exhaustion of remedies, but we rule that it was correct in concluding that there was no breach of

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*The Honorable Dudley B. Bonsal, United States District Judge for the Southern District of New York, sitting by designation.

the duty of fair representation. Accordingly, we affirm the judgment.[1]

I

Facts Underlying The Dispute

Appellants are former limited registration Class B longshoremen employed by PMA, an organization of steamship, stevedoring, and terminal companies doing business on the Pacific Coast. The ILWU is the exclusive bargaining representative of longshoremen in the area. Local 10 is the ILWU's constituent local in the Port of San Francisco.

PMA, and the ILWU are parties to a collective bargaining agreement covering substantially all longshore work on the Pacific Coast.[2] Under that agreement, a Joint Port Labor Relations Committee (the "Port Committee"), made up of representatives of PMA and ILWU Local 10, maintained a central dispatching hall for the hiring and dispatching of all longshoremen at the Port of San Francisco. The agreement provided for two classes of longshoremen, the preferred employees, called Class A, and the limited registered longshoremen, Class B. In operating the hiring hall, the Port Committee distributed work

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[1]This court has confronted issues involved in this case on two previous occasions. In *Williams v. Pacific Maritime Ass'n*, 384 F. 2d 935 (9th Cir. 1967), *cert. denied*, 390 U.S. 987, 88 S.Ct. 1181, 19 L.Ed.2d 1290 (1968), we reversed a summary judgment for defendants and ordered a trial. In *Williams v. Pacific Maritime Ass'n*, 421 F.2d 1287 (9th Cir. 1970), we sustained rulings dismissing the individual defendants and claims for punitive and exemplary damages.

[2]PMA signed a succession of collective bargaining agreements with the ILWU and Local 10. At the time of this suit an agreement was in effect covering the period June 16, 1961 to July 1, 1966. Rules relating to registration and deregistration of longshoremen in the Port of San Francisco, adopted about March 18, 1958, were a part of that agreement, and remained in effect until new rules were adopted about June 17, 1963.

among longshoremen according to their registered status. Fully registered Class A longshoremen received priority for available work. Class B longshoremen had limited rights to available work, were subject to stricter rules and more stringent penalties than were applicable to Class A workers, and were ineligible for membership in Local 10. Each worker paid a *pro rata* share of the cost of running the hiring hall.

The agreement provided that Class B workers could apply periodically for promotion to Class A status. At such times, the Port Committee would review the record of the Class B worker and decided whether to grant or deny his promotion or to discharge him entirely. Class B longshoremen could be deregistered at any time for "cause." The causes were not exhaustively enumerated but included pilferage, intoxications, assault, unexcused failures to be available for work, and dropping hours from time sheets or "chiseling."[3] In essence, this system had been in effect since 1934, when longshoring was primarily a labor intensive industry in which the workers manually moved cargo to and from ships. Gradually, economic pressures forced the industry to mechanize. Mechanization required a shift in the work force. It demanded fewer but more highly skilled laborers to operate sophisticated, expensive machinery. *See generally, New York Shipping Association v.*

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[3]The collective bargaining agreement adopted a "low-man-out" ("LMO") system of dispatch, under which longshoremen with the fewest hours of work in a given pay period were dispatched before those who had worked more hours. *See* Pacific Coast Longshore Agreement § 8.42. This system was designed to equalize work opportunities among longshoremen. It depended on an honor system in which each longshoreman was responsible for accurately reporting the hours he worked. If an individual signed in with fewer hours than he actually had worked he gained an advantage over others in the dispatch. This practice was referred to as "signing in as low," "dropping hours," and "chiseling."

Federal Maritime Commission, 187 U.S.App.D.C. 282, 285, 571 F.2d 1231, 1234 (D.C.Cir. 1978); *Pacific Maritime Association (Johnson Lee),* 155 N.L.R.B. 1231, 1233 (1965).

To meet the needs of the industry, PMA and the ILWU agreed early in 1963 to transfer 400 to 450 of the approximately 530 limited registered Class B longshoremen to Class A status and to eliminate the Class B list and deregister all other existing Class B longshoremen. Implementing this decision, the Union and PMA jointly adopted the following standards to guide their selection of the most qualified persons for transfer.

1. Any Class "B" longshoreman found to have 10 or more hours of Low-Man-Out violations shall be considered ineligible for advancement to Class "A" registration.

2. Any Class "B" longshoreman found to have been late in the payment of his pro rata eight or more times (or six or more times with an otherwise blemished record) shall be considered ineligible for advancement to Class "A" registration.

3. Any Class "B" longshoreman found to have failed to meet the 70% availability requirement for any 30-day period shall be considered ineligible for advancement to Class "A" registration.

4. Any Class "B" longshoreman who has been the subject of one or more employer complaints for intoxication or pilferage that the Joint Port Committee has sustained shall be considered ineligible for advancement to Class "A" registration.

5. The standards shall be applied uniformly and no exceptions shall be made.

On June 17, 1963, a few weeks after adopting the new standards, the Port Committee promoted 448 Class B longshoremen to Class A status and ordered the deregistration of all other existing Class B longshoremen, including the appellants, who were notified of their immediate and summary deregistration. The notices did not state the specific infractions, but advised each individual that he had a right to file a grievance with the Port Committee. Until the date they were deregistered all appellants were, and had been for at least four years, registered in Class B and in good standing.

All but two of the appellants and several other deregistered Class B longshoremen requested a hearing by the Port Committee regarding the grounds for the deregistrations. At those hearings, Port Committee representatives notified each longshoreman of the reason he was deregistered and gave each the opportunity to challenge the factual basis for the discharge. Thereafter, the Port Committee conferred with individual longshoremen to establish and document the infractions leading to their deregistrations. With few exceptions there was no dispute over the underlying facts. Rather, the deregistered longshoremen vainly attempted to challenge the standards for dismissal, alleging that the new rules were not reasonably related to the needs of the industry in 1963 and were arbitrary, capricious and unfair, particularly as they were applied retroactively and to conduct that was not a violation of any rule when it occurred.

At the conclusion of the hearings, the Port Committee reinstated four B men whose deregistrations had been based on mistakes of fact, and affirmed the deregistrations of the appellants. The Committee notified each longshoreman whose deregistration had been sustained that he could file a discrimination grievance under the collective bar-

gaining agreement that would institute a collateral attack on the decision sustaining his deregistration.

Section 17 of the Pacific Coast Longshore Agreement created an exclusive, if somewhat complex, mechanism for resolution of disputes arising under the contract. It provided for a series of joint labor relations committees to adjudicate disputes: a joint port committee, a joint area committee, and a joint coast committee. These committees were composed of three or more representatives designated by the union and three or more representatives designated by the employer with each side of the committee having equal vote.

Section 17.15 outlines the grievance procedure for disputes between labor and management.[4] The Port Committee first investigates the dispute and tries to agree on an appropriate resolution.[5] If the union and management sides of the committee cannot agree, the dispute proceeds to the

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[4]17.15 The grievance procedure of this Agreement shall be the exclusive remedy with respect to any disputes arising between the Union or any person working under this Agreement or both, on the one hand, and the Association or any employer acting under this Ageement or both, on the other hand, and no other remedies shall be utilized by any person with respect to any dispute involving this Agreement until the grievance procedure has been exhausted.

[5]17.2 Grievances arising on the job shall be processed in accordance with the procedure hereof beginning with 17.21. Other grievances as to which there are no specific provisions herein shall be processed in accordance with the provisions hereof beginning with 17.23.

17.21 The gang steward and his immediate supervisor, where the grievance is confined to one gang, or any one steward who is a working member of an affected gang where the grievance involves more than one gang or a dock operation, shall take the grievance to

Joint Area Committee for resolution.[6] If the members of the Area Committee also fail to agree on a disposition, the dispute proceeds to an Area Arbitrator for resolution.[7]

If the Port or Area Committee does come to a decision, either party may appeal the decision to the Coast Committee.[8] If the two sides of the Coast Committee fail to

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the walking boss, or ship or dock foreman in immediate charge of the operation.

17.22 If the grievance is not settled as provided in 17.21, it shall be referred for determination to an official designated by the Union and to a representative designated by the Employer.

17.23 *If the grievance is not settled in 17.21 and 17.22 or does not arise on the job, it shall be referred to the Joint Port Labor Relations Committee which shall have the power and duty to investigate and adjudicate it.* (Emphasis added).

[6]17.24 In the event that the Employer and Union members of any Joint Port Labor Relations Committee shall fail to agree upon any question before it, such question shall be immediately referred at the request of either party to the appropriate Joint Area Labor Relations Committee for decision.

[7]17.25 In the event that the Employer and Union members of any Joint Area Labor Relations Committee fail to agree on any question before it, such question shall be immediately referred at the request of either party to the Area Arbitrator for hearing and decision, and the decision of the Area Arbitrator shall be final and conclusive except as otherwise provided in 17.26.

[8]17.26 The Joint Coast Labor Relations Committee has jurisdiction to consider issues that are presented to it in accordance with this Agreement and shall exercise such jurisdiction where it is mandatory and may exercise it where such jurisdiction is discretionary as provided in 17.261, 17.262 and other provisions of this Agreement.

17.261 Any decision of a Joint Port or Joint Area Labor Relations Committee or of an Area Arbitrator claimed by either party to conflict with this Agreement shall immediately be referred at the request of such party to the Joint Coast Labor Relations Committee (and, if the Joint Coast Labor Relations Committee cannot agree, to the Coast Arbitrator, for review). The Joint Coast Labor Relations Committee, and if it cannot agree, the Coast Arbitrator,

agree, the dispute is resolved by a Coast Arbitrator.[9] If the parties to the dispute claim that the decision of the Port or Area Committee conflicts with a provision of the collective bargaining agreement, the appeal to the Coast Committee is a matter of right. On the other hand, if the dispute involves operation of the hiring hall, interpretation of dispatching rules, pay or discharges, it is a matter for the Coast Committee's discretion whether to accept the appeal.[10]

Section 17.4 of the agreement provides a separate procedure whereby an individual longshoreman may bring a claim of discrimination by the union or his employer under Section 13 of the collective bargaining agreement. Section 13 prohibits discrimination against any longshoreman on the basis of race, creed, color, national origin, religious or

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shall have the power and duty to set aside any such decision found to conflict with this Agreement and to finally and conclusively determine the dispute. It shall be the duty of the moving party in any case brought before the Coast Arbitrator under the provisions of this 17.261 to make a prima facie showing that the decision in question conflicts with this Agreement, and the Coast Arbitrator shall pass upon any objection to the sufficiency of such showing before ruling on the merits.

[9]17.27 In the event that the Employer and Union members of the Joint Coast Labor Relations Committee fail to agree on any question before it, including a question as to whether the issue was properly before the Coast Labor Relations Committee, such question shall be immediately referred at the request of either party to the Coast Arbitrator for hearing and decision, and the decision of the Coast Arbitrator shall be final and conclusive.

[10]17.262 The Joint Coast Labor Relations Committee and the Coast Arbitrator shall have power to review decisions relative to the operation of dispatching halls, or the interpretation of port working and dispatching rules, or discharges, or pay (including travel pay and penalty rates), *but shall exercise it in any case only if the Committee decides to review the specific case.* (Emphasis added).

political beliefs, membership or nonmembership in the union, or activity for or against the union.[11] An allegation of a Section 13 violation also begins with the filing of a grievance with the Port Committee. The longshoreman may appeal any decision of the Port Committee to the Coast Committee, and any decision of the Coast Committee to the Coast Arbitrator.

The collective bargaining agreement contains no other provisions for resolution of disputes.

In late July 1963, most of the appellants and several other Class B longshoremen whose deregistrations had been sustained filed grievances with the Port Committee under section 17. Although the written complaints of the deregistered longshoremen contained no references to violations of Section 13, the Port Committee treated the grievances as section 17.4 complaints, alleging discrimination under Section 13. About the same time most of the appellants also entered into state court litigation to recover California unemployment insurance benefits denied by the state unemployment insurance board. The Port

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[11]Section 13 provides:

> There shall be no discrimination in connection with any action subject to the terms of this Agreement either in favor of or against any person because of membership or nonmembership in the Union, activity for or against the Union or absence thereof, or race, creed, color, national origin or religious or political beliefs.

Under section 17.4:

> When any longshoreman (whether a registered longshoreman or an applicant for registration or a casual longshoreman) claims that he has been discriminated against in violation of Section 13 of this Agreement, he may at his option and expense, or either the Union or the Association may at its option and at their joint expense, have such complaint adjudicated hereunder, which procedure shall be the exclusive remedy for any such discrimination.

Committee decided to postpone consideration of the section 17.4 appeals until the unemployment insurance hearings were concluded. The unemployment insurance referee finished taking evidence on April 1, 1964.

On April 15, 1964, nearly nine months after bringing their grievances to the Port Committee and before the Port Committee had begun to consider the claims, appellants filed their complaint in this matter. They alleged that they already had attempted to exhaust the grievance arbitration procedure and prayed that the necessity for further resort to the grievance procedure be enjoined. After appellants filed suit, and following the conclusion of testimony in the unemployment insurance cases, the Port Committee on May 18, 1964 made its first response to appellants' July 23, 1963 letters, advising appellants that it was treating the letters as section 13 grievances and notifying them that grievance hearings soon would be scheduled.

The district court denied appellants' request for a preliminary injunction against further administrative procedures. The Port Committee then considered appellants' claims and held that they had failed to allege a violation of section 13. An appeal to the Coast Committee was similarly unsuccessful, the committee members agreeing that appellants failed to allege a breach of section 13. Appellants did not attempt to appeal further to the Coast Arbitrator.

The district court concluded that the deregistered longshoremen were "not entitled to relief in this court with respect to their deregistration because they failed and refused to exhaust the grievance arbitration procedure of the ILWU-PMA Contract, which they could have exhausted by taking their grievances to the Coast Arbitrator after receiving the notices of the decision of the Coast Labor Relations Committee on November 20, 1964." Appellants challenge the district court's holding, alleging that

they have exhausted available remedies or, in the alternative, that further grievance procedures should be excused as futile. We agree.

II

Exhaustion of Remedies

Appellants' complaint combined two distinct claims. In one they alleged that in agreeing to the rules under which the appellants were deregistered, the union breached its duty to fairly represent all employees in the unit. In the other they contended that in discharging appellants under the new rules the employer and the union breached the collective bargaining agreement. The former is based on the statutory duty of fair representation, the latter on the terms of the contract. Although the two claims are intertwined, the exhaustion considerations for each are somewhat different and will be treated separately.[12]

A. *Breach of the Collective Bargaining Agreement*

It is a well-established principle of labor law that a union and its members must attempt to exhaust the exclusive remedies provided in their collective bargaining agreement with the employer before they seek judicial intervention for breach of the agreement. *See Vaca v. Sipes,* 386 U.S. 171, 184, 87 S.Ct. 903, 913, 17 L.Ed.2d 842 (1967); *Republic Steel Corp. v. Maddox,* 379 U.S. 650, 652-53, 85 S.Ct. 614, 616, 13 L.Ed.2d 580 (1965); *United Steelworkers v. American Manufacturing Co.,* 363 U.S. 564, 566, 80 S.Ct. 1343, 1345, 4 L.Ed.2d 1403 (1960). All parties apparently agree that appellants fully exhausted their remedies for

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[12]Appellees apparently do not allege that the employees failed to exhaust contractual remedies with respect to their breach of contract claim. They only contend that the employees unreasonably failed to exhaust remedies for the alleged breach of the duty of fair representation. Because the two claims were not explicitly separated until trial, however, we discuss exhaustion in both contexts.

the contractual grievance. Section 17.15 of the Pacific Coast Longshore Agreement governs disputes such as this one alleging breach of the collective bargaining agreement, which arise between "any person working under this Agreement . . . on the one hand, and the Association or any employer acting under this Agreement or both, on the other hand." Appellants complied with section 17.15 by appealing the unanimous decision of the Port Committee to the Coast Committee and that decision was unanimously affirmed. No further avenue of review is available for a contractual grievance under Section 17.15.

B. *Breach of the Duty of Fair Representation*

The heart of the employees' claim of unfair representation is that the union breached its statutory duty to plaintiffs by agreeing to the adoption of the 1963 standards for deregistration. Claims alleging breach of the duty of fair representation in *negotiating* the collective bargaining agreement are not subject to the exhaustion requirement. *Beriault v. Local 40, ILWU,* 501 F.2d 258, 266 (9th Cir. 1974). *Cf. Czosek v. O'Mara,* 397 U.S. 25, 27-28, 90 S.Ct. 770, 772, 25 L.Ed.2d 21 (1970) (suit against union for breach of duty of fair representation in processing grievance not subject to ordinary rule that administrative remedies should be exhausted before resort to the courts); *Glover v. St. Louis-S. F. Ry.,* 393 U.S. 324, 329-31, 89 S.Ct. 548, 551-52, 21 L.Ed.2d 519 (1969); *Conley v. Gibson,* 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). In *Beriault,* which also involved the ILWU contract, this court reasoned that "[t]he failure to exhaust grievance procedures is of no consequence as to these claims because plaintiffs seek modification of the contract, a remedy not available through the grievance procedure." *Beriault v. Local 40, ILWU,* 501 F.2d at 266. Although the claimed breach in the instant case involves negotiation of working rules

rather than contract provisions, we think the same reasoning applies. As discussed below, the working rules were negotiated pursuant to provisions of the collective bargaining agreement permitting such alterations. Once approved, the alterations were incorporated into and for exhaustion purposes became part of the collective bargaining agreement. Because such claims are not subject to exhaustion, appellants are not barred from judicial review.[13] *See also, Vaca v. Sipes,* 386 U.S. 171, 186, 87 S.Ct. 903, 914, 17 L.Ed.2d 842 (1967); *Margetta v. Pam Pam Corp.,* 501 F.2d 179, 180 (9th Cir. 1974).

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[13]Even if the principles of *Beriault* were not applicable, we have doubts regarding appellees' exhaustion defense. The exhaustion requirement is "subject to a number of exceptions for the variety of situations in which doctrinaire application of the exhaustion rule would defeat the overall purposes of federal labor relations policy." *Glover v. St. Louis-S. F. Ry.,* 393 U.S. 324, 329-31, 89 S.Ct. 548, 551, 21 L.Ed.2d 519 (1969). *Accord, Vaca v. Sipes,* 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). *See* Simpson & Berwick, "Symposium—Exhaustion of Grievance Procedures and the Individual Employee." 51 *Tex.L.Rev.* 1179, 1210-13 (1973).

In the instant case, it is doubtful that the arbitrator could have granted the relief requested, since under the collective bargaining agreement the arbitrator's powers were "limited strictly to the application and interpretation of the agreement as written." Pacific Coast Longshore Agreement § 17.52. He apparently did not have the power to set aside rules adopted under the contract. *Cf. Hotel and Restaurant Employees v. Michelson's Food Services, Inc.,* 545 F.2d 1248, 1253 (9th Cir. 1976) (party not required to submit unfair representation claim to arbitration absent the contract's manifestation of a clear, unequivocal intent to require such arbitration). *Accord, Desrosiers v. American Cyanamid Co.,* 377 F.2d 864, 870-71 (2d Cir. 1967); *Hiller v. Liquor Salesmen's Union, Local No. 2,* 338 F.2d 778 (2d Cir. 1964).

There is, further, a strong indication that the grievance machinery was unreasonably delayed. The requirement of exhaustion is bottomed on the assumption that the grievance procedure is plain, speedy and adequate. *Republic Steel Corp. v. Maddox,* 379 U.S.

We recognize that appellees assumed and the district court apparently agreed that the longshoremen were basing their claims only on section 13 of the agreement. Claims based on section 13 must proceed by way of the grievance procedures outlined in section 17.4. These procedures are somewhat different from those provided in Section 17.15 and would have required the longshoremen to appeal finally to the Coast Arbitrator. However, the assumption that the longshoremen were basing their claims on Section 13 is erroneous.

Nothing in section 13 suggests an effort to prohibit misconduct such as that of which appellants complain. That section was explicitly limited to claims based on race, creed, color, sex, national origin, religious beliefs, political beliefs, membership or nonmembership in the union, and activity

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650, 652-53, 85 S.Ct. 614, 616, 13 L.Ed.2d 580 (1965). The inaction of the Port Committee for almost nine months and its failure to inform appellants of the reasons for the delay make appellants' attempts to invoke the grievance mechanism sufficient to satisfy the exhaustion requirement. *See Seay v. McDonnell Douglas Corp.*, 427 F.2d 996, 1001-02 (9th Cir. 1970).

Finally, employees alleging unfair representation by their union in collusion with management are not required to submit their controversy to a group that in large part is chosen by the defendants against whom their real complaint is made. *Glover v. St. Louis-S.F. Ry.*, 393 U.S. 324, 330-31, 89 S.Ct. 548, 551-52, 21 L.Ed.2d 519 (1969). Those persons representing PMA and the ILWU during the grievance proceedings had either participated in deregistering the appellants or had voiced opinions on their cases. It is unlikely that such persons could be entirely fair and impartial. This lack of neutrality in the adjudicating bodies renders exhaustion of remedies futile. *See generally, NLRB v. Industrial Union of Marine and Shipbuilding Workers*, 391 U.S. 418, 426 n.8, 88 S.Ct. 1717, 1723, 20 L.Ed.2d 706; *Petersen v. Rath Packing Co.*, 461 F.2d 312, 315 (8th Cir. 1972); *Lusk v. Eastern Products Corp.*, 427 F.2d 705, 708 (4th Cir. 1970); *Desrosiers v. American Cyanamid Co.*, 377 F.2d 864 (2d Cir. 1967).

for or against the union. The longshoremen's contentions do not fit any of the above categories.

Furthermore, it is quite clear that no one actively involved in administering the collective bargaining agreement during 1963-64 believed that the appellants' claims even arguably fell within the scope of section 13. The employees did not raise section 13 in their grievances.[14] Moreover, the members of both the Port Committee and

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[14]Appellants first invoked the grievance mechanism by letters dated July 27, 1963. All the longshoremen sent identical copies of the following form letter:

> Dear Sirs:
>
> Your committee de-registered me on June 17. On July 24, I received your letter denying my hearing appeal. In so doing you consummated an action that is discriminatory. You have not judged all the men involved by the same standards.
>
> I appeal your decision and request another hearing as stipulated, where I will prove and document this discrimination.
>
> I have never been able to get from you an official statement specifying the alleged charges against me, nor did your committee produce documents to substantiate the charges.
>
> Would you please correct this situation for the next hearing.

Nowhere does the letter refer to section 13 in general or to individual violations of that section in particular. The complaints simply allege that they were "deregistered" as Class B longshoremen in "an action that is discriminatory." *See Williams v. Pacific Maritime Ass'n*, 384 F.2d 935, 941 (9th Cir. 1967). The letters recited that the 1963 standards were unfair because they applied to conduct or acts that had occurred before adoption of the 1963 standards. The longshoremen had made this point in earlier hearings before the Port Committee.

It was not until the longshoremen received the Port Committee's first response to the letters nine months later that they learned that the Committee had construed the claims as attempts to allege discrimination under section 13. In denying relief, however, both the Port Committee and the Coast Committee (as well as the longshoremen themselves) unanimously agreed that the claim did not fall within the scope of section 13. It appears that the Committee

the Coast Committee unanimously agreed that the employees' claims did not allege section 13 type discrimination.[15] We must conclude from this that appellants suit does not raise section 13 type issues and, therefore, is not subject to the exhaustion requirements of section 17.4.

III

Duty of Fair Representation

The substance of appellants' suit is that the ILWU breached its duty of fair representation to appellants in negotiating the standards under which appellants were discharged. This contention divides into two parts: first, that it was impermissible for the union to treat the B men differently than the fully registered Class A longshoremen; second, that the terms negotiated were arbitrary, were unrelated to the ability to perform longshore work, and constituted *ex post facto* punishment for infractions already atoned for. Both contentions are without merit.

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placed the breach of contract claim in the wrong pigeonhole to begin with and then disposed of the matter by saying that the wrong classification barred consideration of the claim.

[15]Both PMA and ILWU officials understood that section 13 was limited to its literal meaning. For example, ILWU President Harry Bridges explained to one of the deregistered workers before the Coast Commission that the grievance procedure under section 13 was designed only to determine if there was discrimination within the literal language of that contractual provision:

> Mr. Bridges: I think we should tell you, Mr. Love, that in terms of pro rata and those other items, they are determined at the lower level. We don't review them up here in the nature of an appeal. Now, the only thing we look into up here is if there is a charge that you have been improperly dealt with under Section 13 of the Contract, which I have just read, which can be racial, political or religious discrimination. On that matter of low man out or pro rata, *we don't consider that.* That is in command or in charge of the Committee down below. You should understand that. (Emphasis added).

The premise that the union breached its duty of fair representation in agreeing to terms permitting preferential treatment for Class A workers runs throughout appellants' brief and is stated most succinctly in the assertion that "the creation and maintenance of the Class B list was *per se* unlawful." To the contrary, however, the law of fair representation clearly permits a union to negotiate for and agree to contract provisions involving disparate treatment of distinct classes of workers (here provisional workers as compared to fully registered longshoremen) as long as such conduct is not arbitrary or taken in bad faith. *See Ford Motor Co. v. Huffman*, 345 U.S. 330, 338-39, 73 S.Ct. 681, 686, 97 L.Ed. 1048 (1953); *Dugan v. IAM*, 510 F.2d 1086 (9th Cir.), *cert. denied*, 421 U.S. 1012, 95 S.Ct. 2417, 44 L.Ed.2d 680 (1975); *Beriault v. Local 40, ILWU*, 501 F.2d 258 (9th Cir. 1974).[16]

Applying the "bad faith or arbitrariness" standard, we conclude that the appellees are not guilty of unfair representation to the appellants even though fully registered workers received substantially greater benefits under the contract than did probationary Class B workers. The historical reasons for the creation and maintenance of the limited registration Class B list have been noted above, and they clearly demonstrate that a rational basis existed for the distinction between those in the two seniority classes. The unique needs of the industry convince us

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[16]Plaintiffs also appear to contend that disparate contractual treatment of Class B Workers resulted from their nonmembership in the union. The record in this case does not support plaintiffs' contention. Most of the nonunion members of Class B received a clear benefit from the 1963 negotiations, namely, a promotion to Class A status. Those who were denied that promotion were denied it on objective and reasonable grounds. There was no distinction between those promoted and those deregistered in terms of union membership. *See Beriault v. Local 40, ILWU*, 445 F.Supp. 1287, 1295 (D.Or.1978).

that it was not only lawful but necessary for the union to take a good faith position favoring better terms and conditions for one group of employees than for another. As Judge Skopil said when, as a district court judge, he dealt with an identical contention directed to registered and casual lists in the Pacific Coast longshore industry:

> I do not find it unreasonable for defendants to take steps to insure a comfortable standard of living for a large number of regular employees (registered clerks and longshoremen) by giving such employees high priority for the available work even though a minority of members of the bargaining unit (plaintiff casuals and others in the same position) are offered only a limited amount of work during peak periods of waterfront activity.

Beriault v. Local 40, ILWU, 445 F.Supp. 1287, 1293-94 (D.Or.1978). *Accord, Pacific Maritime Association (Johnson Lee),* 155 NLRB 1231, 1234 (1965); *International Longshoremen's and Warehousemen's Union v. Waterfront Employers' Association of the Pacific Coast,* 90 NLRB 1021, 1023 (1950).

Appellants also contend that the union breached its duty of fair representation when it agreed to adopt the 1963 standards under which appellants were deregistered. The premise underlying this contention is that it was unlawful for the ILWU and PMA to agree to review the record of a longshoreman's conduct as a Class B limited registration longshoreman at the time when he would be considered for promotion to Class A full registration status. Appellants urge that a failure to discipline or the imposition of discipline less than deregistration following each infraction barred subsequent consideration of the misconduct in determining whether or not the man would continue to be a longshoreman and so be promoted to Class A full registration status. We conclude, however, that in adopting

and implementing the 1963 standards the union acted neither arbitrarily nor in bad faith.

It is necessary at the outset to dispel the notion that in adopting the 1963 standards for deregistration the appellees violated their duty to provide notice of the conditions under which the employees could be discharged. Appellants claim that the union violated a fiduciary duty owed to appellants when it approved retroactive application of new rules and penalties by PMA and the ILWU without prior notice to the appellants. It is true that the duty of fair representation requires the union to explain to members of the bargaining unit their rights and duties under the collective bargaining agreement. *See Retana v. Apartment, Motel, Hotel, and Elevator Operators Union, Local No. 14*, 453 F.2d 1018 (9th Cir. 1972); *Brady v. Trans World Airlines, Inc.*, 401 F.2d 87 (3d Cir. 1968), *cert. denied, sub nom. International Association of Machinists v. Brady*, 393 U.S. 1048, 89 S.Ct. 680, 21 L.Ed.2d 691 (1969). We are convinced, however, that the union supplied the employees with repeated and adequate warning that the misconduct of which they were found guilty could be the basis for their failure to advance to Class A status. The 1958 "Memorandum of Rules Regarding Registration and De-Registration of Longshoremen in the Port of San Francisco" ("1958 Rules") set out the procedure for bringing new men into registration status as Class B limited registration longshoremen, the powers reserved as to deregistration of these men, the procedure under which men in that status would be promoted to Class A full registration status, and the provisions for a full review of the man's record when his trial period was being terminated.[17] Section 9 of the 1958 Rules provided:

> 9. De-Registration of Limited Registration (Class B) Longshoremen.

[17] *See* 1958 Rules, § 8.

> (a) *A Class B longshoreman . . . may be de-registered for cause by the Joint Labor Relations Committee (in accordance with such rules or uniform procedures as may be established or followed by such Committee)* if the Committee finds:
>
> [(i-x) any of ten types of misconduct or inadequacy for the job of longshoreman] . . .
>
> (xi) Or for any other cause; provided that neither membership or non-membership in the union nor activity or nonactivity for or against the union, shall be a factor in considering applications for registration or in de-registration.

(Emphasis added). The meaning of this provision was brought home to longshoremen applying in 1958 for positions as Class B workers. The application form prepared by the parties emphasized that the privileges of registration could be withdrawn pursuant to rules then in existence or later agreed to in collective bargaining. A letter of explanation that accompanied each application form stated that the applications and the jobs would be subject to the 1958 Rules, and it directed each person to "read the box at the end carefully" warning that it "states the conditions under which your application will be received." Paragraph 4 in the box read:

> Class "B" registration, if granted, shall be subject to agreements between the PMA and ILWU, or their successors, and to *rules with respect to registration and deregistration* established by said parties; I understand that registered longshoremen may be deregistered and that *registration may be revoked in accordance with such agreements and such rules now in effect or hereafter to be agreed upon or adopted* by the Association and the Union or their successors or by the Joint Port Labor Relations Committee.

(Emphasis added). Additional disclosure was made in subsequent letters.

The record establishes, moreover, that even before the 1963 standards for admission to Class A status were negotiated, the appellants understood that the actions for which they ultimately were deregistered constituted misconduct. Each action was specifically prohibited by the collective bargaining agreement or by various working rules adopted by the Joint Labor Committees. The rules of conduct adopted by the Port Committee in 1959 specifically spelled out the obligation of the Class B men to maintain a 70 per cent availability record. This obligation was driven home to the longshoremen in a letter sent to each calling attention to the 70 per cent requirement. Intoxication and pilferage were explicitly prohibited by sections 17.81, 17.82, and 17.823 of the Pacific Coast Longshore Agreement. Longshoremen were admonished several times against late payment or nonpayment of pro rata charges, most notably in letters sent to each worker applying for Class B status. The rule against dropping LMO hours was well known as part of the common law of the shop, and each of the appellants testified he knew that there was a rule against chiseling and that "dropping LMO hours" was misconduct. Other warnings to longshoremen not to engage in such misconduct abound in the record.

Any of the four activities that became the basis for deregistration in 1963 was understood to constitute failure to abide by the "rules and determinations of the Joint Labor Relations Committee," which "can be cause for suspension or loss of registration." Thus, there were no new rules retroactively turning permitted actions of the appellants into misconduct. The actions found to be cause for deregistration were all misconduct under Port Committee rules in effect throughout the period of appellants' registration. This fact and the observation that appellants were warned repeatedly that their records would be reviewed upon their consideration for advancement to Class A status are suffi-

cient to support the district court's conclusion that the union did not breach a duty to warn of conduct that might lead to deregistration.

Turning to the standards themselves, we agree with the district court that they were negotiated in good faith and were neither arbitrary nor irrational. As we observed earlier, the differential treatment accorded the B men was necessitated by the inevitable change in the nature of the longshore industry.

The same consideration that resulted in the 1958 Rules establishing the bifurcated system of A and B men also gave rise to the 1963 standards for deregistration or advancement to Class A status. By September 1962, the Coast Committee had come to an agreement that the parties should move toward lifting the freeze on promotion of B men to A status, and PMA had obtained a commitment from the ILWU that as a condition of lifting the freeze there should be an upgrading of the longshore work force as part of the program for selecting limited registration B men for promotion. The record supports the district court's findings that the conduct of both the ILWU and its Local 10 in the negotiations leading to the explicit promotion standards was carried on with motives only of good faith and honesty, in an effort to reach the best agreement for the unit as a whole, and without in any way sacrificing the meritorious positions of any of the individuals in the bargaining unit. In negotiating contract terms, a union often confronts the task of representing employees who have different, often competing, interests. In representing the unit as a whole, the union may agree to terms favorable to some employees and unfavorable to others, provided it acts in good faith. *See, e. g., Lusk v. Eastern Products Corp.,* 427 F.2d 705 (4th Cir. 1970). *See generally, J. I. Case Co. v. NLRB,* 321 U.S. 332, 338-39, 64 S.Ct. 576, 580-81, 88 L.Ed. 762 (1944).

In this case, the criteria by which appellants were deregistered represents such an accommodation. The mere differential effect of these standards does not in itself support a finding that the standards were negotiated in bad faith.

Neither the ILWU nor Local 10 conducted collective bargaining in an improper manner. In the spring of 1963 the parties reached agreement on the four explicit promotion standards enumerated above. We conclude, as did the district court, that the four substantive standards were neither arbitrary nor irrational. Rather, each is justifiable as relevant to the qualifications for employment as a Class A longshoreman.[18]

Late payment of pro rata. As the NLRB concluded on this very issue, it is not irrational or capricious to believe that one who is lax in meeting his obligations to his fellows to share the costs of the dispatching hall may not develop into a conscientious and reliable worker. *Pacific Maritime Association (Johnson Lee)*, 155 NLRB 1231, 1234 (1965).

Chiseling. A record of dropping low-man-out hours also indicates that an individual's promotion to permanent status will not contribute to upgrading the work force. An individual caught more than once chiseling on an honor system does not present a convincing portrait of one who will improve the work force. This is particularly true where as here there was little apparent chiseling in the entire group of Class B workers.

Availability. Similarly, it is reasonable and logical to assume that one who has a record of poor availability when

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[18]The appellees were not restricted to adopting only physical standards. The work force appellees sought to obtain also required individuals of good character. *See Pacific Maritime Ass'n (Johnson Lee)*, 155 NLRB 1231 (1965).

work is relatively scarce will not help meet the need for a steady, permanent work force.

Employer complaints. Appellants allege that because the men deregistered for employer complaints of intoxication (or involvement in a work stoppage where alcohol was a factor) were very careful after returning from suspension not to be involved in any subsequent incidents, the complaints on their records have no significance regarding their qualifications as Class A workers. The observation that only a very few employees had such complaints on their records indicates that the employers did not file such complaints frivolously. Although it may be said that the standards were strict at the time of promotion, it cannot be said that they were irrational or illogical in believing that those who had been subject to such employer complaints were not desirable material to add to the permanent work force.

Although deregistration for violation of the standards may appear harsh, this court does not function to substitute its judgment for that of the parties in selecting the yardstick with which to measure a longshoreman's qualifications for admission to fully registered status. The fact that over 80 per cent of the Class B men met the standards demonstrates that the overwhelming majority of them were aware of their obligations under the contract and that the union was remarkably successful in obtaining permanent status for most of the Class B men. The reliability criteria adopted by the appellees to deregister the B men cannot, as a matter of law, be held outside their powers under the contract. The results were harsh but so were the necessities that gave rise to the need for the decision.[19]

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[19]Because we hold that the union did not breach its duty of fair representation towards appellants, we need not decide whether the PMA colluded with the ILWU to deprive the discharged employees of fair representation. *Cf. Hines v. Anchor Motor Freight, Inc.*, 424

IV

Breach of the Collective Bargaining Agreement

Appellants assert lastly that under the collective bargaining agreement the Port Committee could not adopt the 1963 standards without unanimous consent of the Coast Committee and without reducing the standards to writing. Thus, they argue, enforcement of the 1963 standards constituted a breach of the collective bargaining agreement.

Section on 17.851 of the Pacific Coast Longshore agreement provides:

> More stringent rules and penalties than those provided hereinabove that are applicable to limited registered longshoremen or to nonregistered longshoremen or to both such groups *may be adopted or modified by unanimous action of the Joint Coast Labor Relations Committee and, subject to the control of such Committee so exercised, more stringent rules and penalties* applicable to limited registered men or nonregistered men or to both groups *that are provided in existing and future local joint working, dispatching, and registration rules and procedures* or by mutually agreed practices *shall be applicable.*

(Emphasis added). The 1958 Rules as well as the 1963 standards for deregistration were validly adopted by the Port Committee in accordance with the second clause in the subsection. Under that clause the Port Committee was entitled to promulgate future registration rules and procedures subject to the action of the Coast Committee setting them aside in exercise of its ultimate power over this subject.

U.S. 554, 96 S.Ct. 1048, 47 L.Ed.2d 231 (1976); *Vaca v. Sipes*, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967) (employer jointly liable with union for actions taken in grievance procedure that effect a "cover-up" for employer's contract violations).

Appellants point out that under section 22 of the Pacific Coast Longshore Agreement, "No provision or term of this Agreement may be amended, modified, changed, altered or waived except by a written document executed by the parties hereto." They claim that because the 1963 rules for deregistration were not in writing, enforcement breached section 22. As collateral operating procedures whose adoption is expressly authorized by section 17.851 of the collective bargaining agreement, these rules merely elaborate the basic terms of the agreement. Accordingly, they were not subject to the requirements of section 22.

Because the 1963 Rules were adopted pursuant to the explicit procedures provided in the PCLA, enforcement of them to deregister appellants did not breach the collective bargaining agreement.

CONCLUSION

We believe that the district court erred in concluding that appellants failed to exhaust required grievance procedures. We nevertheless affirm on the merits because appellants have not demonstrated that PMA or the ILWU or its constituent Local breached either a duty of fair representation owed to appellants or the terms of the Pacific Coast Longshore Agreement.

AFFIRMED.

Appendix B

United States Court of Appeals
For The Ninth Circuit

No. 77-1398

George R. Williams, et al.,
Plaintiffs-Appellants,

v.

Pacific Maritime Association, a nonprofit corporation, International Longshoremen's & Warehousemen's Union, an unincorporated association, et al.,
Defendants-Appellees.

[Filed May 13, 1980]

O R D E R

Before: DUNIWAY and KENNEDY, Circuit Judges, and BONSAL,* District Judge.

The panel as constituted in the above case has voted to deny the petition for rehearing. Judge Kennedy has voted to reject the suggestion for a rehearing en banc, and Judges Duniway and Bonsal have recommended rejection of the suggestion for rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

*Honorable Dudley B. Bonsal, United States District Judge for the Southern District of New York, sitting by designation.

Appendix C

In the United States District Court
for the Northern District of California

Civil No. 42284 GBH

George B. Williams, et al.,
Plaintiffs,

v.

Pacific Maritime Association, et al.,
Defendants.

[Filed August 27, 1976]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

Few cases which survive the jousts and skirmishes of pre-trial and proceed to the rigor of trial can be disposed of in a summary manner, and the instant case is certainly no exception. The voluminous briefs and files in this matter represent the culmination of years of preparation and weeks of difficult trial.

All counsel are warmly congratulated by the court for their patience, dedication and thoroughness. No party could have finer representation than was afforded the participants in these proceedings.

This cause came on regularly for trial before the Court sitting without a jury, on January 14, 1974, and continued with the taking of live testimony until July 3, 1974.

The plaintiffs were represented by Arthur Brunwasser, Esq., and Fred Kurlander, Esq. Defendant Pacific Maritime Association (hereinafter "PMA") was represented

by Richard Ernst, Esq., Dennis Daniels, Esq., and Kendall DeBevoise, Esq., of the firm of Ernst & Daniels. Defendants International Longshoremen's & Warehousemen's Union and ILWU Local No. 18 (hereinafter sometimes "Union defendants") were represented by Richard Gladstein, Esq. and Norman Leonard, Esq., of the Firm of Gladstein, Leonard, Patsey & Andersen.

The trial was bifurcated, and this first stage was concerned with the issue of liability only. Oral and documentary evidence was introduced by and on behalf of each of the parties. Thereafter, counsel for all parties prepared a written Stipulation as to Testimony which was filed on February 28, 1975. Subsequently, further documentary material was incorporated into the record.

After all parties had rested, the parties filed their post-trial briefs and proposed Findings of Fact and Conclusions of Law, and the cause was then submitted to the Court for decision.

The Court has considered all the evidence and testimony adduced at the trial and in the Stipulation and has studied the briefs of counsel. Being fully advised in the premises, and on the basis of all the evidence not subject to legal objection, this Court now makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

The parties.

1. Plaintiffs are former limited registration Class B longshoremen who commenced their employment in June and August 1959 in the Port of San Francisco. They were discharged or "deregistered" from this employment on June 17, 1963.

2. Defendant Pacific Maritime Association is a non-profit California corporation composed of all or substan-

tially all of the major stevedoring employers on the Pacific Coast and in the Port of San Francisco. It is an "employer" within the meaning of § 2(2) of the National Labor Relations Act, 29 U.S.C. § 152(2).

3. Defendant International Longshoremen's and Warehousemen's Union (the "ILWU") is the certified collective bargaining representative for all longshoremen employed by the members of PMA and is recognized as such under § 2(5) of the Act, 29 U.S.C. § 152(5).

4. The plaintiffs were among the longshoremen comprising the unit represented by the ILWU as the certified collective bargaining representative.

5. Defendant ILWU Local No. 10 ("Local 10") is the chartered local affiliate of defendant ILWU for longshoremen working in the Port of San Francisco.

Collective bargaining through 1948.

6. Since 1934, there has been in continuous existence a collective bargaining relationship between the PMA ("PMA is used herein to refer to the Pacific Maritime Association and its predecessors, including the Waterfront Employers Association of San Francisco and the Waterfront Employers Association of the Pacific Coast and the Shipowners Association of the Pacific Coast) and the ILWU ("ILWU" is used herein to refer to the ILWU and its predecessor from 1934 to 1938, International Longshoremen's Association, District 38).

7. In 1934, there was a bitter longshore strike on the West Coast. It was finally concluded on the basis of an award entered by the National Longshoremen's Board. This was a board appointed by President Roosevelt. Its chairman was Archbishop Hanna. The other members were O. K. Cushing, Esq., and Edward F. McGrady, Assistant Secretary of Labor.

8. A principal demand of the longshoremen striking in 1934 was that there be a limitation on indiscriminate entry into the longshore work force, with a limited group of longshoremen to have preference in the assignment of work and to be assigned to jobs through a hiring hall to be operated by the longshoremen.

9. The Archbishop Hanna award established the system of registering longshoremen, so that the longshoremen with significant seniority were placed on a list of registered longshoremen and were given first preference for all of the work available to longshoremen in the port. This award also called for the use of a dispatching hall for the dispatching of longshoremen to work. It provided that the hall would be under the joint control of the employers and the union, but that the dispatchers themselves would be elected by the union.

10. The Archbishop Hanna award provided for a system of labor relations committees. These committees were given the administrative function of operating the dispatching halls. In addition, they were given the duty of investigating and resolving grievances that either the union or the employer might bring against the other party.

11. The fundamentals of the registration system, which were established in 1934, have been embellished and refined since that date.

12. By 1938, there were three groups of longshoremen. The group with the highest seniority were those that had full registration under the existing contract; they had first call on all the work. A second group of employees had second preference for the work and had a seniority status in the industry giving them some continuity of employment. The third group embraced the workers who came and went as peaks on longshore work required the use of extra men.

13. For the fifteen years from 1934 through 1948, the nature of the PMA-ILWU collective bargaining was one of continuous guerrilla warfare.

14. In 1948, a particularly bitter and extended strike occurred in the longshore industry on the West Coast.

Collective bargaining after 1948.

15. After 1948, the nature of the ILWU-PMA collective bargaining was sharply different. The theme of the collective bargaining between the ILWU and the PMA between 1948 and 1963 was that there should be joint efforts to find a way to preserve and develop the West Coast stevedoring industry so that (a) increasingly improved wage scales for the work performed and continuity of employment could be provided to the registered longshore work force, and (b) the employers could achieve a stable industry enabling them to operate their businesses on a continuing basis in a manner efficient enough so as to provide a fair return on their investment while generating the cash flow necessary for such a wage scale.

16. One of the enlightened, forward-looking steps that the parties achieved after the 1948 strike was the milestone agreement for mechanization and modernization of the West Coast waterfront industry (the "ILWU-PMA M & M Agreement"). By this contract amendment, the ILWU agreed to the introduction of labor-saving devices and the elimination of certain restrictive work practices and it agreed to the basic demand of the employers that the longshore work force should be upgraded. The M & M Agreement made significant achievements toward this goal. By it, the employers agreed to make payments of $29 million to mitigate the impact on employes of technological unemployment, and agreed to assign longshoremen to all the new equipment and to give them the necessary training to hold jobs in a much more "capital intensive" mode of operations.

It was hoped that this would end a long and troubled history of labor discord on the West Coast waterfront.

17. The ILWU-PMA collective bargaining contract in effect during all the periods material hereto included, *inter alia,* a basic contract document entitled "Pacific Coast Longshore Agreement" (hereinafter "PCLA"), local working rules, local dispatching rules, a Memorandum with respect to Registration and Deregistration adopted in 1958, minutes of the San Francisco Joint Port Labor Relations Committee (hereinafter "JPLRC") and rules, determinations and procedures adopted by the JPLRC, minutes of the Northern California Joint Area Labor Relations Committee (hereinafter "Joint Area LRC") and rules, determinations and procedures adopted by the Joint LRC, minutes of the Joint Coast Labor Relations Committee (hereinafter "Joint CLRC") and rules, determinations and procedures adopted by the Joint CLRC, decisions of area and coast arbitrators, determinations of the parties, and the industrial common law of the shop developed under this particular contract during the period since 1934.

18. The ILWU-PMA collective bargaining contract makes provisions for a Joint Port Labor Relations Committee for each port, one of these being the JPLRC, a Joint Area Labor Relations Committee for each of the four areas of Washington, Oregon, Northern California and Southern California, respectively, one of these being the Joint Area LRC, and the Joint Coast Labor Relations Committee (the Joint CLRC).

19. These labor relations committees have duties in the maintenance and operation of the dispatching hall, in the control of the registered lists of the men in the port, in administering the contract, in investigating and adjudicating all grievances and disputes, including complaints against longshoremen and other disputes involving the

ILWU-PMA contract. Generally, the JPLRC has the authority to maintain and operate the San Francisco dispatching hall and to exercise control of the registered list in San Francisco and to investigate and adjudicate all grievances and disputes arising with respect to operations in San Francisco. The JPLRC had a special B-list panel that handled issues as to the registration status of limited registration Class B men for the period relevant hereto, including the time when the applications submitted in 1958 were being reviewed to select those applicants who should be granted Class B limited registration status and the time when the B-list panel members participated in the conferences with plaintiffs and other limited registration longshoremen in July of 1963. The Joint AREA LRC has an intermediate appellate authority with respect to certain disputes. The Joint CLRC has ultimate control over the registered lists, has appellate authority with respect to decisions in the lower labor relations committees, and has additional authority with respect to the carrying on of collective bargaining during the period of the contract's term.

20. Beginning on or about January 1, 1952, the San Francisco dispatching hall was operated through the "low-man-out" system of equalizing work opportunities. Under this LMO system, each man kept a record of the hours that he worked and the other hours chargeable to him under the procedures governing this system, the resulting figure being the individual's "accumulated LMO hours". Every three months, a new work equalization period began at which time each of the registered men started out afresh from a zero accumulated LMO hours figure. During the work equalization period, the men were dispatched on a "low-man-out" system, under which the man whose work number was correctly entered on the master dispatch sheets used in the dispatching hall at the lowest accumulated LMO

hours figure was entitled to the first dispatch to a job. The integrity of the system depended upon the honesty and accuracy of the individual's records kept by each longshoreman and upon his using the correct accumulated LMO hours figure in his use of the dispatching hall. This system was described at the trial as an "honor system".

21. It was possible for an individual registered longshoreman to get an advantage over his fellows by being dispatched at an accumulated LMO hours figure that was below his true LMO hours figure. To take a job under these circumstances was to "drop LMO hours". Local 10 employed record checkers who from time to time reviewed the records as to the dispatch of longshoremen to determine whether or not any Class A full registration longshoremen had dropped an excessive number of LMO hours.

The status of the limited registration Class B longshoremen.

22. In the 1950's, agreed procedures were developed through bargaining between the ILWU and the PMA to establish a formal limited registration Class B category of longshoremen. These men were to have a probationary or second-class status. They were to have the second preference in the amount of available work. It was agreed that the limited registration Class B longshoremen would be selected by formal procedures, including review of detailed information as to their past history and the use of physical examinations. These men would hold limited registration Class B status subject to stricter rules and more stringent penalties than were applicable to the full registration Class A longshoremen under the contract and common law of the shop that had developed over the years since 1934, which would continue in effect but be applicable only to the longshoremen with a seniority status established through years of service, the fully registered Class A longshoremen.

23. In keeping with the nature of the status of the limited registration Class B longshoremen, the contract provided that he could be deregistered for any cause, except only if such action would constitute a violation of § 13 of the PCLA, the contract's provision prohibiting arbitrary action, to wit: discrimination "in connection with any action subject to the terms of the Agreement either in favor of or against any person because of membership or nonmembership in the Union, activity for or against the Union or absence thereof, or race, creed, color, national origin or religious or political beliefs".

24. The grievance-arbitration procedure for § 13 grievances was set out in § 17.4 of the PCLA. This procedure gave the individual member of the bargaining unit the right to process a claim that § 13 had been violated. He was given full control of his grievance. He could carry it to the Joint CLRC and on to the Coast Arbitrator if he wished to do so. He could use his own counsel in the proceedings before the Coast Arbitrator. The union could not prevent him from processing his grievance, but he and his union could agree to proceed together on his grievance claim.

25. The parties agreed that there would be a review of the full record of each Class B limited registration longshoreman at the time he could apply for promotion and that he could be deregistered if the JPLRC found cause therefor upon consideration of his work history and all phases of his qualifications to do all of the work of longshoremen, including consideration of ability, efficiency, experience, regular availability and other relevant factors.

26. In 1958, the parties agreed that a group of limited registration Class B longshoremen should be added to the longshore work force in San Francisco. To this end, an application form was developed and notices issued that men could apply for Class B limited registration status in the port of San Francisco. Some 9,000 applications were

filed. Plaintiffs were among those who filed applications at this time. The group of limited registration Class B men of which plaintiffs were a part included all of the limited registration Class B longshoremen holding such registration status from 1959 until or after August 1, 1963.

27. The application for Class B limited registration, which each plaintiff and all the other applicants for Class B limited registration status signed and filed in 1958, notified the applicant that the job for which he was applying would not have the same security as that of a Class A fully registered longshoreman, but would be subject to the rules and determinations of the joint labor relations committees and the parties. The plaintiffs testified that they paid little attention to this information.

28. At the time that each of the limited registration longshoremen who were registered in 1959 was advised that he should come to the JPLRC to arrange for his physical examination if he chose to have his application considered further—and on the letter so advising the applicant—he was notified that he was required to make a prorata share payment to the union each month to cover his share of the costs of the dispatching hall, the labor relations committee, etc., and that he could be deregistered for failing to pay the established pro-rata amount or for failing to live up to any JPLRC rules or determinations. Although the plaintiffs were so notified at this time, they testified that they paid little attention to this information.

29. There were JPLRC rules and determinations that a limited registration Class B man was not to drop LMO hours in using the honor system for assigning work to longshoremen on an equal share basis, that a limited registration Class B longshoreman was not to participate in work disruptions (and especially not in any in which the drinking of alcohol was a significant factor), that a limited reg-

istration Class B longshoremen was to pay his pro-rata on time each month, and that the limited registration Class B longshoreman was to maintain 70% availability. The plaintiffs admitted that they did not pay attention to the fact that these rules were rules and determination of the JPLRC.

30. At about the time he first began to do longshore work as a limited registration Class B longshoreman, each of the plaintiffs was given written notice that his record as a longshoreman would be reviewed at the time he would be considered for promotion and that misconduct for such things as dropping LMO hours, failing to maintain availability, or being involved in work disruptions would count against him at that time. The plaintiffs stated that they paid little attention to this information.

31. In July 1959, each of the plaintiffs was sent a copy of the provisions of the Memorandum on Registration and Deregistration, stating that he could be deregistered for any cause other than by an action that would be prohibited by § 13 of the contract. The plaintiffs stated that they paid little attention to this document.

32. From the day that each Class B man gained limited registration, he was repeatedly and clearly informed that he was in a second-class category, that he had to keep his "nose clean", that he should live up to all the rules, that he could be deregistered for failing to live up to the rules, and that the union and the employer were keeping records with respect to his misconduct to which they would give consideration when the time came for him to be reviewed for promotion.

33. The limited registration Class B longshoremen were informed early in 1960 that the union was in agreement with the employer that a man who gave cause for deregistration would be deregistered rather than promoted to full

registration Class A seniority status when his record was reviewed for promotion consideration.

34. Each limited registration Class B longshoreman was duly and repeatedly informed that—if he was to be assured of promotion to the coveted seniority status of a Class A fully registered longshoreman—it was necessary that he maintain an absolutely clean record as to "misconduct" contrary to any rule or determination of the JPLRC applicable to limited registration Class B longshoremen.

35. As a result of the information given to the plaintiffs, in written and oral forms, each of the plaintiffs was and is chargeable with knowledge that misconduct of all of the types considered by the JPLRC in determining who would be promoted and who would be deregistered in the spring of 1963 was misconduct for which the limited registration Class B longshoremen could be deregistered.

36. In 1960, Local 10 reviewed the records of over 300 limited registration Class B longshoremen before finding 163 of them whom it would agree were eligible under the contract for promotion. In doing so, it reviewed each individual's record as to the time of paying his pro-rata and as to how many LMO hours he had dropped.

The 1960-1962 period.

37. During the period that plaintiffs were limited registration longshoremen, beginning with June or August, 1959, and continuing until June of 1963, the JPLRC from time to time accumulated the date as to the availability of the Class B limited registration longshoremen and gave notices of deregistration to all those who appeared to have failed to meet the 70% availability standard.

38. Each of the individual longshoremen involved was advised that he could file a grievance with respect to the

notices of deregistration for poor availability, and 339 of the limited registration Class B longshoremen (including 29 of the plaintiffs participating in this proceedings) did so during the period of these reviews.

39. Through the handling of grievances in response to notices of deregistration for poor availability and the handling of other grievances with respect to on-the-job complaints, the JPLRC developed a due, fair and reasonable adjudicative technique that was appropriate for finding out actual facts with respect to the complaints regarding the longshoremen and for applying the contract's terms to the facts so found. This procedure was not an adversary procedure, such as is used in the Anglo-American court system, but it was an investigative technique in which the collective bargaining parties and the individuals involved carried on informal procedures to find facts as to a longshoreman's conduct relevant to the issues under the contract. This procedure was fair, due and appropriate under the circumstances and in view of the history in this industry and the general practices of collective bargaining in American industry.

40. As a result of the use of this collective bargaining adjudicative technique, many of the limited registration Class B longshoremen, including 29 plaintiffs, who were given notice of deregistration for poor availability were restored after hearings to registration status, but others were deregistered. In some cases the deregistration was sustained, although the individual longshoreman had not previously been brought before the JPLRC on a poor-availability deregistration issue. In many cases, men were given a second opportunity to maintain 70% availability where an acceptable reason for poor availability was shown at the hearing before the JPLRC. In some cases, individuals were given a third or even a fourth chance to return to registered status after having had a record of

poor availability where a good and sufficient reason for such an unusual work history was provided. An industrial injury could provide such an excuse.

41. During the period in 1960 when Local 10 was making studies as to whom it might agree were eligible under the contract for promotion to fully registered Class A status, the joint CLRC exercised its ultimate control of the registered lists in the ports in California, Oregon and Washington by freezing registration and freezing promotion from limited registration Class B status to the coveted seniority status of Class A full registration. The purpose of this freeze was to avoid making changes in the work force that might have to be reversed later because the need for men in the longshore work force had changed as a consequence of the Mechanization and Modernization programs being put into effect. This was a rational and reasonable exercise of discretion by the ILWU and the PMA as the parties to the collective bargaining contract in carrying on their good-faith collective bargaining in light of the uncertainties in manpower requirements created by the expectation of changes in operations under the M & M Agreement.

42. Approximately one year after the freeze, a motion was submitted by a group of San Francisco longshoremen asking for the promotion of the limited registration Class B longshoremen who had good records. At this time, plaintiff Stanley Weir made a report to the limited registration Class B longshoremen in San Francisco, in which he praised this resolution. He stated that it was then well known that only the better longshoremen would be promoted and that those who failed to live up to the rules that had been publicized as defining misconduct of longshoremen would not be promoted.

43. Factions developed within Local 10 on the subject of promotion of the limited registration Class B men. One group included Selden Osborne, Asher Harer, Hal Yanow, Frank Stout, James Kearney and others; it favored the granting of union membership to the limited registration Class B men and their dispatch with the fully registered Class A longshoremen, even though this would be in violation of the contract and the law. Another faction included Harry Bridges, William Chester, Robert Rohatch, Tommie Silas and others; it was of the opinion that the union should comply with the contract with the PMA and promote only on the basis of joint action between the ILWU and the PMA.

44. The 1962 coast caucus of the ILWU directed the representatives of the longshoremen to negotiate with the employers to lift the freeze.

45. In the contract negotiations of 1962, the ILWU negotiators reached agreement with the PMA that the subject of the freeze on the promotion of the limited registration Class B longshoremen to fully registered Class A status—and the freeze on adding new limited registration Class B men—would be referred to the Joint CLRC for further detailed collective bargaining.

The explicit promotion standards.

46. By September 1962, the Joint CLRC had come to an agreement (a) that the parties should move toward lifting the freeze and (b) that the PMA had obtained a commitment—which the ILWU was bound to honor in carrying on collective bargaining with respect to the conditions under which the freeze would be lifted—that there should be an upgrading of the longshore work force as part of the program for selecting limited registration Class B men for promotion.

47. In the fall of 1962, Local 10 gave consideration to the various types of misconduct that ought to be considered in determining who would be promoted and who would not be promoted to fully registered Class A status. The preliminary discussions as to such considerations included the subjects of the time of paying pro-rata, the dropping of LMO hours, and on-the-job complaints.

48. During the period from October to December, 1962, the staff of the San Francisco office of the PMA reviewed the records of all of the limited registration Class B longshoremen with respect to on-the-job complaints and availability, and submitted a report to the union representatives of the facts found by this review.

49. Early in December 1962, the joint CLRC reached a formal agreement for the lifting of the freeze on promotion of limited registration Class B longshoremen to the coveted seniority status of Class A fully registered men, with the provision that the whole subject would remain under the control of the Joint CLRC and that it would have a sub-committee make studies of various facets of the overall registration problem.

50. In December 1962, there was a meeting between San Francisco representatives of the ILWU and the PMA to exchange facts with respect to the employment records of the limited registration Class B longshoremen and to discuss which causes for deregistration should be pardoned and which should not. At that time, these representatives had data as to late payment of pro rata and the JPLRC actions with respect to misconduct of the limited registration Class B longshoremen during the period that they had been registered for waterfront work. The representatives also discussed giving consideration to actual availability records and to misconduct in the hall by dropping LMO hours.

51. In December 1962, the union representatives on the Joint CLRC advised the members of Local 10 in San Francisco that the ILWU side of the Joint CLRC would support a program for promoting 400 limited registration Class B longshoremen in San Francisco to the coveted seniority status of the Class A fully registered man.

52. In January 1963, the union representatives on the Joint CLRC proposed that there be a preference in reviewing men for promotion based on their union affiliations or lack thereof, but the PMA refused to accept such a system of discrimination. PMA's protest prevailed, and no such discrimination occurred.

53. In early 1963, Local 10 proceeded to make studies to ascertain facts as to misconduct in the dispatching hall shown by the number of LMO hours dropped by each of the individual limited registration longshoremen.

54. At the end of January 1963, each longshoreman on the Pacific Coast was given written notice with his paycheck of his right to handle a grievance in his own way, subject to his own control, up through the grievance procedure and up to the Coast Arbitrator (under § 17.4 of the PCLA) with respect to any action that was contrary to his interests and that he claimed was tainted by any arbitrary action on the part of the union or the employer as a result of any claimed discrimination in connection with any action subject to the terms of the Agreement either in favor of or against any person because of membership or nonmembership in the Union, activity for or against the Union or the absence thereof, or race, creed, color, national origin or religious or political beliefs.

55. During the period from January 1963 to approximately May 8, 1963, the parties to the ILWU-PMA contract carried on collective bargaining negotiations as to exactly

how the provisions of the 1958 Memorandum on Registration and Deregistration and particularly the provision of § 9(xi) thereof under which any limited registration Class B longshoreman could be deregistered if the JPLRC found any cause therefor would be applied. Through hard bargaining on this subject of explicit promotion standards, the ILWU was able to persuade the PMA to broaden the area of the joint pardons for violations of the rules and determinations of the JPLRC, violations of the contract, and other misconduct on the job and in the dispatching hall. As a result thereof, the number of limited registration longshoremen who were not promoted was decreased from approximately 150 to 82.

56. In the hard bargaining between the PMA and the ILWU with respect to the explicit promotion standards, there was good-faith collective bargaining in the ordinary course on the part of each of the two parties. The evidence establishes that neither the ILWU nor Local 10 proceeded in such collective bargaining with any motive of malice, hostility, ill-will, bad faith, animosity or invidious considerations toward any limited registration Class B longshoreman, including any plaintiff, or engaged in any arbitrary, discriminatory or invidious conduct as to any such person.

57. The PMA position that it was entitled to an upgrading of the longshore work force was based, fundamentally, on the provisions of § 17.851 of the PCLA, which reads:

> "17.851 More stringent rules and penalties than those provided hereinabove that are applicable to limited registered longshoremen or to nonregistered longshoremen or to both such groups may be adopted or modified by unanimous action of the Joint Coast Labor Relations Committee and, subject to the control of such Committee so exercised, more stringent rules and penalties applicable to limited registered men or nonregistered men or to both groups that are provided in

existing and future local joint working, dispatching and registration rules and procedures or by mutually agreed practices shall be applicable."

Pursuant to this understanding, and to carry out its intent, and pursuant to other contract provisions (a) the 1958 Memorandum as to Registration and Deregistration—including its provisions for a review of the entire record of a limited registration Class B longshoreman at the time he is considered for promotion and the § 9(xi) provisions that such a longshoreman can be deregistered for any cause —was adopted; (b) the JPLRC prepared the applications for limited registration Class B status, issued them, issued its letter of February 25, 1959, agreed to the provisions set out in its minutes of June 17, 1959, and distributed excerpts from the 1958 memorandum and these minutes; and (c) the union and the JPLRC representatives warned plaintiffs of their need to obey all the rules on pain of deregistration.

58. The evidence establishes that the conduct of both the ILWU and its Local 10 in the negotiations leading to and agreeing upon the explicit promotion standards was carried on with motives only of good faith and honesty in an effort to reach the best agreement for the interests of the collective bargaining unit as a whole and without in any way sacrificing the meritorious positions of any of the individuals in the bargaining unit.

59. During the negotiations, the PMA carried on a good-faith effort to see to it that there would be an upgrading of the longshore work force and to enforce the commitment obtained from the ILWU for good and adequate consideration that it would participate in such an upgrading program.

60. In the spring of 1963, through the good faith collective bargaining described above, the parties reached agreement on the explicit promotion standards which included four substantive standards. They agreed that a

limited registration Class B longshoreman would not be eligible to be promoted (a) if he failed to meet the 70% availability standard, unless he established a good and satisfactory reason therefor, or (b) if he dropped 10 or more LMO hours, or (c) if he had been suspended by the JPLRC for being involved in a work disruption in which alcohol was a significant factor, or (d) if he had failed to pay his pro-rata on time on 8 or more occasions or, if he had an otherwise blemished record, had failed to pay his pro-rata on time on 6 or more occasions. The explicit promotion standards also included provision that anyone who failed to meet these standards would be deregistered and that the standards should be uniformly applied to all applicants from the limited registration Class B list.

61. On the basis of all of the evidence not subject to legal objection, this Court finds that the explicit promotion standards were rationally related to the needs of the industry as they existed in the spring of 1963 and were not arbitrary, capricious, in bad faith, nor were they a pretext for engaging in any unlawful, illegal or improper conduct against any limited registration Class B longshoreman, including the plaintiffs individually and as a group. The parties reasonably and in good faith believed that they were, and the Court specifically finds that they were, a fair, honest and reasonable resolution of the issues presented by the manpower needs of the industry for competent and reliable workers under the Mechanization and Modernization program as these needs appeared to them to exist, and as in fact they did exist, in the spring of 1963.

62. As they provided in the representation of the longshoremen in all matters relevant to this proceeding, the ILWU and its Local 10 provided fair representation to all of the employes in the collective bargaining unit—including each of the limited registration longshoremen and accordingly each of the plaintiffs—in negotiating the explicit

promotion standards. In this representation, neither the ILWU nor its Local 10 acted on the basis of any malice, hostility, bad faith, animosity, or ill-will toward any of the persons in the collective bargaining unit, including the plaintiffs as a group and each of them, and neither of the union defendants engaged in any invidious, arbitrary, discriminatory, capricious, irrational or unfair activity in regard thereto.

The implementation of the explicit promotion standards.

63. During the spring of 1963, the JPLRC reviewed all the data available to it and reached findings of fact as to the compliance of each of the limited registration Class B longshoremen with the four substantive promotion standards.

64. On March 28, 1963, the JPLRC sent notices of deregistration to each of the 88 limited registration Class B longshoremen whose record indicated that he had failed to maintain 70% availability in one or more 30-day periods since the previous check on availability in April 1962. Grievances with respect to these notices were filed by 76 of those sent such notices.

65. At its meeting on April 24, 1963, the JPLRC held hearings on these grievances and made determinations in respect to 88 cases. The final decisions with respect to 16 cases were that the men be deregistered; with respect to 57 cases, the decisions were that the man be reinstated with probation; with respect to 6 cases, the decisions were that the man be reinstated without probation; and 9 cases were held over for medical reasons. On the basis of all the evidence not subject to legal objection, the Court finds that these procedures were due, fair, appropriate and reasonable.

66. Due notice was given to the limited registration Class B longshoremen early in May 1963 that they could

apply for promotion to fully registered Class A status, that those who did not qualify for promotion would be deregistered, and that any limited registration Class B man was entitled to use the grievance machinery in case he was notified that the information in the hands of the JPLRC indicated that he was not qualified for promotion or had given cause for deregistration.

67. The JPLRC issued applications for promotion, and all limited registration Class B longshoremen filed such applications in May 1963, with only a few exceptions. Plaintiffs James Green, James Lankford and Thomas E. Nisby did not even file applications for promotions. All other plaintiffs did file applications for promotion to Class A full registration status.

68. During the period beginning no later than on or about May 10, 1963, Local 10 of the ILWU had made arrangements under which it provided Asher Harer to act as ombudsman-advocate on behalf of each of the limited registration Class B longshoremen who had failed to receive notice that he had satisfied all of the explicit promotion standards. Asher Harer was a member of Local 10 who had experience as a record checker for over 10 years and who was highly sympathetic to the plaintiffs and as ombudsman-advocate on behalf of them and other limited registration Class B longshoremen he conducted himself in an enterprising and industrious manner. He was a member of a faction in Local 10, apparently opposed to that including Harry Bridges, William Chester, Robert Rohatch, Tommie Silar, J. Walker, Albert James, Carl Smith and others.

69. Asher Harer as the ombudsman-advocate carried on a vigorous effort, for long hours over many weeks of time, to assist each of these limited registration Class B longshoremen in getting full information as to the facts

that appeared to prevent such longshoreman's being found to have met all of the explicit promotion standards, to gather evidence that would be helpful to the limited registration Class B longshoreman in proving that he had satisfied all these standards, and in developing arguments to support his grievances.

70. The ombudsman-advocate presented evidence that he gathered as to 30 or more individual cases to the union representatives on the B-list panel of the JPLRC, and the members of that panel exchanged evidence with the ombudsman-advocate. As a result of these cooperative efforts, agreement was reached among the members of the B-list panel of the JPLRC and the ombudsman-advocate as to 28 individuals. They agreed that 9 limited registration Class B longshoremen who had previously apparently failed to satisfy the explicit promotion standards did actually satisfy these standards. These men were subsequently promoted. As to the other 19, they agreed that they were properly deregistered. There was disagreement between the ombudsman-advocate and the members of the JPLRC with respect to two limited registration Class B longshoremen, both of whom are plaintiffs in this proceeding.

71. By May 15, 1963, the JPLRC had determined that approximately 408 of the 560 limited registration Class B longshoremen then registered in San Francisco had satisfied all of the explicit promotion standards.

72. By May 15, 1963, the JPLRC had determined that it needed more information with respect to the remaining applicants for promotion to the covered seniority status of a fully registered Class A longshoreman.

73. Despite the fact that it had not then reached initial determinations on many of the applications on which such determinations could have been made, the JPLRC on

May 15, 1963 agreed to promote the 408 limited registration Class B longshoremen who appeared to be in full compliance with the explicit promotion standards. On May 16, 1963, a substantial number of the 408 men on the JPLRC list of those apparently qualified for promotion were initiated into the Local 10 membership.

74. On the morning of May 17, 1963, the San Francisco longshore dispatch hall dispatched the 408 men on the JPLRC's May 15, 1963, list with the fully registered Class A longshoremen.

75. On May 17, 1963, the Joint CLRC exercised its ultimate control over the registered lists by setting aside the action of the JPLRC in promoting the 408 to full registration Class A status prior to the time it had reached initial determinations as to the status of the remaining limited registration Class B longshoremen. The Joint CLRC took the view, which this Court finds to have been fair and reasonable, that the implementation of the explicit promotion standards should not result in two groups of men among those promoted to the coveted seniority status of Class A full registration longshoremen in 1963 on the basis of whether they were promoted on May 15, 1963 or at a later date.

76. During the period of approximately three weeks following May 15, 1963, the JPLRC reached initial determinations with respect to virtually all of the limited registration Class B longshoremen who were not among the 408 listed in the May 15, 1963 minutes. The JPLRC held meetings at which individual longshoremen appeared and gave information. The JPLRC made a double check as to the LMO hours dropped by anyone who appeared to have dropped an excessive number of LMO hours. The JPLRC continued to study the information submitted by those

men who had appeared at the hearings as to availability information in support of their cases.

77. By June 10, 1963, the members of each side of the B-list panel of the JPLRC had come to agreement as to their side's position as to what was the correct initial determination with respect to the 127 limited registration Class B longshoremen who were not on its list set out in the minutes of its meeting of May 15, 1963, or on the list of 16 of the limited registration Class B men deregistered for poor availability or the list of 9 men who were to provide further medical information that were in the minutes of its meeting of April 24, 1963, and had revised the May 15 initial determinations as to two of the 408 men. The B-list panel members on each side had communicated with the other side of the JPLRC, and both sides were in agreement as to the facts as to every limited registration Class B longshoreman. As a result, there were initial determinations on all the applications of the limited registration Class B men except for individuals then in the armed services, individuals who had grievances pending as to pilferage, and individuals required to provide medical information.

78. By June 13, 1963, the respective sides of the JPLRC had advised their counterparts on the Joint CLRC of what had been done and the Joint CLRC had informally approved the results of the actions in administering the registration lists for the port of San Francisco.

79. In view of another question raised within Local 10, the JPLRC also decided that it should institute procedures to find out if there was any evidence that any limited registration Class B longshoreman who did not meet all the explicit promotion standards was included in the lists they were preparing to state those who were being pro-

moted. It decided that it would correct any error of this type that was shown to exist.

80. During the period prior to June 17, 1963, the members of the JPLRC agreed on a new form of letter to be sent to the limited registration Class B longshoremen whose records indicated that they did not meet the explicit promotion standards. It was agreed that this form of notice would take the place of the form incorporated in the Memorandum as to Registration and Deregistration adopted by this same committee in 1958.

81. On June 17, 1963, the JPLRC formally concluded its work in administering the limited registration Class B list in San Francisco by sending out notices to 78 limited registration Class B longshoremen that they had been deregistered, by notifying 448 longshoremen that they had been promoted to the coveted seniority status of a Class A fully registered longshoreman, and by listing the individuals as to whom further consideration would have to be given before a final determination could be made because the man was in the armed services, or the man had a grievance pending as to pilferage, or because the man had to provide information as to his future medical condition. Using the form of notice that it had adopted during the month of June, 1963, the JPLRC sent notices of deregistration to the 78 men. This notice advised each man that he had a right to file a grievance and that the grievance would be considered by the JPLRC.

82. The JPLRC gave public notice that it would welcome any evidence indicating that any limited registration Class B longshoreman who had not met any express promotion standard had been promoted in error. No evidence was submitted to indicate that any such errors had been made.

83. In reaching decisions as to the facts relevant to the explicit promotion standards in the case of each of the limited registration Class B longshoremen—including each of the plaintiffs—and in the application of the explicit promotion standards thereto, the ILWU and its Local 10 provided fair representation to all of the persons in the collective bargaining unit, including each of the plaintiffs. As they provided in the representation of the longshoremen in all matters relevant to this proceeding, the ILWU and its Local 10 provided fair representation to all of the employes in the collective bargaining unit—including each of the limited registration longshoremen and accordingly each of the plaintiffs—in negotiating the explicit promotion standards. In this representation, neither the ILWU nor its Local 10 acted on the basis of any malice, hostility, bad faith, animosity, or ill-will toward any of the persons in the collective bargaining unit, including the plaintiffs as a group and each of them, and neither of the union defendants engaged in any invidious, arbitrary, discriminatory, capricious, irrational or unfair activity in regard thereto.

The adjudication of plaintiffs' grievances.

84. Grievances with respect to the notices of deregistration dated June 17, 1963, were filed by 57 limited registration Class B longshoremen, including all of the plaintiffs except Thomas Nisby and Alfred Straughter.

85. Each of the limited registration Class B longshoremen who had been denied promotion and who had filed a grievance was notified that the hearing on his grievance would be held at Pier 24 in San Francisco on July 9, 10 or 11, 1963.

86. During the period up to the time of each man's individual hearing, the union provided each man with information as to the issues of fact that were significant

to his notice of deregistration, and Asher Harer continued to act as ombudsman-advocate to assist each of these men in regard to his grievance.

87. Each of the plaintiffs who had filed a grievance appeared at Pier 24 before the JPLRC on July 9, 10 or 11, 1963. Each was notified of the reason or reasons that indicated that he had not satisfied some one or more of the explicit promotion standards. Each was given an opportunity to challenge the factual basis for the reason given at a conference with JPLRC representatives. Such conferences with respect to dropping of LMO hours were scheduled to be held at the dispatching hall records office, and the conferences with respect to the time of payment of pro-rata were scheduled to be held at the office of the union where records as to these payments were maintained.

88. During the period from July 16 through July 18, 1963, conferences were held with each of the limited registration Class B longshoremen who wished to have a conference with respect to the factual issues of which they were given notice at their respective hearings on July 9, 10 and 11. Individual representatives of the JPLRC—from both Local 10 and the PMA—met with each individual man and went over the facts in his case with him. With the exception of Frank Nereu, there was no disagreement as to the basic facts. Stanley Weir disagreed with the inference drawn from the evidence. Anthony Melvin disagreed with the decision that certain hours he dropped for a short time were counted against him. Antonio Cafeteiro and Roger Fleeton had a disagreement with the committee as to the ultimate fact to be found on the basis of the evidentiary facts as to flopping on Sundays.

89. James Edwards, a representative of PMA on the JPLRC B-list panel, participated in the conference with Stanley Wier. They went over the evidence in detail. James

Edwards determined that the evidence submitted by Stanley Weir in support of his claim that he did not square off a second time in the week of October 8-15, 1962, was insufficient to overcome the evidence before the JPLRC that he had squared off two times in this week, and James Edwards concluded that Stanley Weir had indeed dropped in excess of 10 LMO hours in violation of the rules and determinations of the JPLRC. The Court credits the testimony of James Edwards that he believed in good faith that Stanley Weir had actually dropped hours on this occasion.

90. As a result of the reviews carried on in these procedures in July, 1963, by the JPLRC, four limited registration Class B longshoremen received decisions setting aside their deregistrations. Twenty-six other limited registration Class B longshoremen obtained modifications in the findings as to the exact facts involved in their cases, but the modifications as to these men were insufficient to establish that the men had satisfied all the explicit promotion standards.

91. On all of the evidence not subject to legal objection, this Court finds that each of the plaintiffs did in fact engage in misconduct of such type and amount as to establish that he failed to satisfy one or more of the explicit promotion standards.

92. The decisions of the JPLRC in July, 1963, were reached through the same adjudicative process as that used by the JPLRC for issues of similar gravity and factual complexity during the period from 1959 to 1963, including issues as to whether or not an individual limited registration Class B longshoreman should be deregistered or should be permitted to continue to work in the industry. This procedure is one it had followed in the past with respect to men who appeared to have failed to satisfy the 70% availability rule and men charged with other contract violations. The

procedure that was followed had developed over the years of collective bargaining in the industry. This was a normal grievance process for this type of issue. The process employed was a reasonable, due, fair and appropriate grievance process for the adjudication of such issues.

93. On July 16, 1963, Local 10 instructed its representatives on the JPLRC to move in the next JPLRC meeting that the deregistrations of the limited registration Class B longshoremen who had failed to meet the explicit promotion standards only because of the dropping of LMO hours or the late payment of pro-rata be permitted to remain on the limited registration Class B list subject to a suspension and that they thereafter be promoted. Such motions were placed before the JPLRC by the Local 10 representatives. A disagreement was reached on the motions. It was the position of the PMA representatives that the JPLRC could not change the explicit promotion standards that had been adopted by the parties and approved by the Joint CLRC and that this issue could be raised only before the Joint CLRC. This disagreement was taken to the Joint Area LRC, where there was agreement that Local 10 could proceed with this issue only before the Joint CLRC.

94. On July 22, 1963, the JPLRC reached agreement as to the merits of each of the grievances filed by the limited registration Class B longshoremen with respect to the notices of deregistration of June 17, 1963, and notices of these decisions were sent to the men who had filed grievances, including those who had been found to have satisfied the explicit promotion standards and those whose grievances were denied.

95. During the process the union took elaborate and detailed efforts to make certain that there would be no factual mistake that would cause the plaintiffs or the other limited registration Class B longshoremen to be denied pro-

motion, and the union defendants became satisfied (a) that the PMA representatives and the JPLRC were similarly engaged in such efforts to be certain that there would be no factual mistake that would cause any of the plaintiffs or other limited registration Class B longshoremen to be denied promotion, and (b) that this effort was carried on jointly by the JPLRC representatives from both the union and the employer in determining the facts as to all of the limited registration Class B longshoremen who had filed grievances.

96. Throughout the proceedings in adjudication of the grievances filed by plaintiffs and other limited registration Class B longshoremen regarding the June 17 notices of deregistration, the ILWU and its Local 10 provided all of the longshoremen in its collective bargaining unit, including each of the plaintiffs, with fair representation. As they provided in their representation of the longshoremen in all matters relevant to this proceeding, the ILWU and its Local 10 provided fair representation to all of the employes in the collective bargaining unit—including each of the limited registration longshoremen and accordingly each of the plaintiffs—in negotiating the explicit promotion standards. In this representation, neither the ILWU nor its Local 10 acted on the basis of any malice, hostility, bad faith, animosity, or ill-will toward any of the persons in the collective bargaining unit, including the plaintiffs as a group and each of them, and neither of the union defendants engaged in any invidious, arbitrary, discriminatory, capricious, irrational or unfair activity in regard thereto.

The § 17.4 grievance procedure.

97. Each of the plaintiffs and the other limited registration Class B longshoremen whose deregistrations were sustained in July, 1963, was notified that he could use the

§ 17.4 procedure of the PCLA by filing a discrimination grievance, which would institute a collateral attack upon the decision sustaining his deregistration, which collateral attack could be carried to the Coast Arbitrator by the individual man, who would have complete control of his own case in this procedure.

98. On July 25, 1963, Johnson Lee, one of the limited registration Class B longshoremen whose grievance against his deregistration was denied on July 22, 1963, filed a charge with the National Labor Relations Board.

99. On or about July 26, 1963, most of the plaintiffs and some other limited registration Class B longshoremen whose deregistrations had been sustained met and determined to file grievances under the § 17.4 procedure, and Stanley Weir prepared a form to state such a grievance and distributed it to the plaintiffs and other limited registration Class B longshoremen. It stated [Ex. 427]:

> "Your committee de-registered me on June 17. On July 24, I received your letter denying my hearing appeal. In so doing you consummated an action that is discriminatory. You have not judged all the men involved by the same standards.
>
> "I appeal your decision and request another hearing as stipulated, where I will prove and document this discrimination.
>
> "I have never been able to get from you an official statement specifying the alleged charges against me, nor did your committee produce documents to substantiate the charges.
>
> "Would you please correct this situation for the next hearing."

On July 27, 1963, most of the plaintiffs filed a discrimination grievance in these precise words.

100. On or about July 27, 1963, the plaintiffs considered the advisability of filing charges with the National Labor Relations Board.

101. During the period beginning July 25, 1963, the great bulk of the plaintiffs filed appeals from decisions denying them unemployment insurance benefits or had unployment insurance benefit decisions favorable to them appealed by PMA.

102. On August 1, 1963, Stanley Weir filed his appeal against the denial of unemployment insurance benefits to him. It stated [Ex. IV]:

> "The reason for your decision is based upon information that I have not had any opportunity to confront or refute. At no time has the union or the employer presented a documentation of L.M.O. charges when both myself and anyone with power to find me guilty or innocent was present. (Local 10, I.L.W.U. is for returning even guilty LMO violators to work). (This, as of July 27, 1963)
>
> "I request my case be consolidated into the group appeal and that during the appeal and at the hearing the charges against me be complete, specific and completely documented so that I can finally have an opportunity to make my defense."

103. On or before August 3, 1963, the plaintiffs agreed not to carry their case to the National Labor Relations Board but instead to take it to the courts. They held a press conference and publicly announced their decision. This news was broadcast by radio and television and reported prominently in the San Francisco newspapers.

104. On or about August 15, 1963, the plaintiffs sent the telegram to Local 10, threatening it by stating that they would go to court if Local 10 did not get plaintiffs their "jobs back".

105. Plaintiffs knew that the announcement of their decision to go to court would cause a strong negative reaction among the members of Local 10 and officials of the ILWU.

106. On or about September 1, 1963, the plaintiffs retained Sidney Gordon as their attorney "to get their jobs back". The initial task he took on was to handle their unemployment insurance litigation.

107. Extensive litigation was instituted by Sidney Gordon before the unemployment insurance referee, the appeals board, the California Superior Court, the California District Court of Appeal, and the California Supreme Court with respect to the unemployment insurance issues raised by plaintiffs so that months of time were devoted to these proceedings. During these proceedings, oral notice was given to the plaintiffs through their then attorney, Sidney Gordon, that the JPLRC had determined that the § 17.4 grievance procedure would be carried forward as soon as the transcript of the unemployment insurance hearings was available. The taking of evidence before the referee was concluded on April 1, 1964.

108. Because of the time involved in this unemployment insurance litigation that was carried on at length in accordance with the demand of Stanley Weir and because of the desirability of not duplicating the taking of live testimony, the delay in proceeding to the actual grievance hearings was reasonable and necessary.

109. On April 15, 1964, plaintiffs filed their complaint in this matter in which they alleged that they had already exhausted the grievance-arbitration procedure in July, 1963, and prayed that the use of the grievance procedure be enjoined.

110. On May 18, 1964, notices were sent to the plaintiffs who had filed discrimination grievances, notifying them

that their grievances were being sent down for a hearing under the § 17.4 procedure of the PCLA.

111. On May 22, 1964, Sidney Gordon, counsel for the plaintiffs, wrote to George R. Andersen, counsel for the defendant unions, saying [Ex. LS]:

> "Please be advised that I have instructed my clients in the above-entitled matter [*Williams* v. *PMA*], and those persons I represent in the subject controversy, not to be present pursuant to those Notices respecting re-hearing on their deregistrations which are set to commence next week.
>
> "Our position is that all matters of Discovery are within the exclusive jurisdiction of the Court, further, that the extra-judicial steps now attempted, and, without provision for representation by counsel of Record, subsequent to commencement of the action, and with respect to the very issues of law and fact advanced by the complaint, in particular, before a Committee, whose members are individually sued, is, clearly, a usurpation of the province of the Court."

112. On May 25, 1964, George R. Andersen responded to the foregoing communication he acknowledged receiving from Sidney Gordon, saying [Ex. LT]:

> "For your general information, the grievance hearing which is scheduled is pursuant to the grievance/arbitration machinery set forth in the longshore contract, which machinery provides in effect that this procedure is the sole and exclusive remedy in the event grievances arise of the nature covered by what we believe to be the claims of your clients.
>
> "In other words, the contract provides for arbitration; and we suggest to you that if you have a cause of action, you may be seriously jeopardizing it by refusing to follow the arbitration procedure.
>
> "I suggest you let us know by return mail if you are refusing to arbitrate, or whether your clients will appear."

113. On May 25, 1964—the day preceding the first of these § 17.4 grievance hearings—Sidney Gordon, counsel for the plaintiffs, appeared *ex parte* in this case in this Court without notice to the defendants and obtained a temporary restraining order against the holding of the § 17.4 grievance procedure hearings on the plaintiffs' grievances. This temporary restraining order was served shortly after the proceedings began. Upon service of the temporary restraining order, the proceedings then recessed.

114. A hearing was thereafter held in this case in this Court before Judge Albert C. Wollenberg on June 2, 1964, on plaintiffs' request for a preliminary injunction to prohibit the JPLRC from carrying on the grievance procedure under § 17.4.

115. During the hearing before Judge Wollenberg, counsel for PMA and counsel for the ILWU and Local 10 confirmed, and represented to the Court and to counsel for plaintiffs, that the ILWU-PMA contract provided a grievance procedure for issues raised by the plaintiffs, that plaintiffs were entitled to participate therein using their own counsel and with full control of their cases, and that this would lead to an arbitration before Professor Kagel of Boalt Hall Law School of the University of California with respect to claims raised by the plaintiffs. When Judge Wollenberg indicated that the injunction prayed for would not issue, Sidney Gordon nevertheless declared that he would not participate and would not permit the plaintiffs to participate in these grievance procedures. Judge Wollenberg then advised Sidney Gordon of the law as to the exhaustion of the grievance-arbitration process, pointed out he would be taking a severe risk for his clients if he failed to exhaust the available grievance-arbitration procedures under the collective bargaining contract, directed defendants to communicate with Sidney Gordon at all steps of this procedure as counsel for the plaintiffs, and had

Sidney Gordon give the defendants an address that could be used for such communications.

116. Thereafter, the JPLRC carried on its proceedings under § 17.4 with respect to the discrimination grievances filed by plaintiffs and reached decisions thereon. Notices of these decisions were given to Sidney Gordon and to each of the plaintiffs; each was (in the notice documents) informed of the procedure by which an appeal to the next step of the grievance procedure could be taken.

117. Thereafter, Sidney Gordon, on behalf of the plaintiffs, brought plaintiffs' grievances to the Joint CLRC.

118. On November 20, 1964, after Sidney Gordon and counsel for the PMA and counsel for the ILWU were given the opportunity to file briefs with respect to the issues, the Joint CLRC held its hearing on the appeals. Sidney Gordon did not make a personal appearance. One of the plaintiffs, Cleo Love, appeared at the hearing. He admitted that he had in fact not met the explicit promotion standards and asserted that these standards were contrary to the contract and should be rescinded.

119. The minutes of the Joint CLRC meeting on November 20, 1964, show that the following issues were considered by the committee at that time:

> The Joint CLRC held that the explicit promotion standards did not establish any new rules or penalties, that they were adopted in full satisfaction of all contract requirements, that they were applied uniformly to all applicants for promotion, that no person was promoted who failed to satisfy any of the explicit promotion standards, that each of plaintiffs did in fact fail to satisfy one or more of the explicit promotion standards, that the explicit promotion standards were material and relevant to upgrading the longshore work force, that this purpose was reasonable, rational and

appropriate, that the explicit promotion standards were not in violation of any terms of the collective bargaining contract, that the explicit promotion standards were not retroactive or retrospective in effect, and, further, that neither in negotiating the explicit promotion standards nor in adjudicating grievances in regard thereto did the International ILWU or Local 10 engage in any discrimination either in favor of or against any person because of membership or nonmembership in the union, activity for or against the union or absence thereof, or race, creed, color, national origin or religious or political beliefs.

Each of the plaintiffs was entitled to take to the Coast Arbitrator his appeal from the decision of the Joint CLRC on November 20, 1964.

120. The explicit promotion standards, and the form of the letter used to notify the plaintiffs of their deregistration under date of June 17, 1963, were duly approved by the final action of the Joint CLRC on November 20, 1964, where express approval was given to the explicit promotion standards, both with respect to their substance and to the formalities of their adoption. They had previously been duly approved by the Joint CLRC by its informal action prior to July 17 (under which the July 17 notices were issued) and by the Joint CLRC's formal action of June 24, 1963, approving the explicit promotion standards and the application thereof as a general course of action in exercising its control over the registration lists for the port of San Francisco.

121. During the proceedings before Judge Wollenberg on June 2, 1964, Judge Wollenberg had advised Sidney Gordon that the case would be kept open in the files of the Court and that Sidney Gordon could have prompt access to this Court should the defendants fail to pro-

vide due, fair, reasonable and appropriate hearings in the grievance-arbitration process to the plaintiffs in accordance with the commitments that their counsel had made in this Court. Thereafter, Judge Wollenberg's directions that notice be given to plaintiffs, and their counsel, Sidney Gordon, of all subsequent steps in the grievance-arbitration process were followed. No contention was made in this case in this Court that the grievance-arbitration procedures carried on by the defendants were not in accordance with the assurances given to Sidney Gordon to Judge Wollenberg.

122. Under date of December 18, 1964, each of the plaintiffs and Sidney Gordon was given notice of the Joint CLRC decision. The notice set forth details as to the procedure to be used to take the matter to arbitration before the Coast Arbitrator and the time limits thereon.

123. Each of the plaintiffs had the right to continue to use the § 17.4 procedure with respect to his grievance by filing an appeal from this decision of the Joint CLRC to the Coast Arbitrator. In following such procedure, the individuals had full control of their respective cases in perfecting their appeals, in subpoenaing witnesses and documents, in presenting their evidence, and in arguing their contentions. They were free to appear individually or as a group and to have individual or group counsel represent them.

124. In the course of the grievance procedures up through the notices issued on December 18, 1964, the ILWU and its Local 10 provided fair representation to all of the employes in the collective bargaining unit, including each of the limited registration longshoremen and accordingly each of the plaintiffs. In this representation, neither the ILWU nor its Local 10 acted on the basis of any malice, hostility, bad faith, animosity, or ill-will toward any of the persons in the collective bargaining unit, including the

plaintiffs as a group and each of them, and neither of the union defendants engaged in any invidious, arbitary, discriminatory, capricious, irrational or unfair activity in regard thereto.

125. On May 4, 1965, the trial examiner of the National Labor Relations Board issued his intermediate report in which he stated his conclusion that the explicit promotion standards were adopted through breach of the duty of fair representation, citing *Miranda Fuel Company, Inc.,* 140 NLRB 181 (1962). On May 17, 1965, the plaintiffs, on behalf of all persons similarly situated, filed a charge with the Labor Board asserting that they had been deregistered as a result of the breach of the duty of fair representation as decided by the trial examiner. They asserted they had exhausted their remedies under the grievance machinery procedure of the contract in November, 1964. General Counsel of the Labor Board, apparently on the theory that the period of limitations under the National Labor Relations Board ran from an earlier act of the JPLRC and had expired or on the basis of his discretion not to proceed with a charge filed with the Labor Board, refused to permit these plaintiffs to join in the contentions made by Johnson Lee and the other limited registration Class B longshoremen who had filed charges in 1963.

126. The Board issued its decision in *Pacific Maritime Association (Johnson Lee),* on November 29, 1965, which is reported at 155 NLRB 1231 (1965). Its decision was contrary to that proposed by the trial examiner. It concluded that the explicit promotion standards had been adopted to meet "the industry's increasing need for a greater number of steady, highly qualified and responsible longshoremen by affording fully registered status to the most qualified of the limited registered longshoremen and abolishing the Class B list". It sustained the use of the

late payment of pro-rata as an explicit promotion standard, the decision that those who failed to meet the explicit promotion standards would be deregistered, and the existence of the Class B limited registration list of men who would be subject to stricter rules and more stringent penalties than the Class A longshoremen.

The plaintiffs' procedural complaints.

127. On or about March 28, 1963, Stanley Weir received notice that he had been deregistered because certain data in the hands of the JPLRC indicated that he had failed to meet the 70% availability test. Upon receipt of this notice, he went to the Local 10 office to get information as to what was the basis for the charge that he had failed to meet this test. He was then given assistance by officials of Local 10 to determine what was involved. Local 10 communicated on his behalf with the Pacific Maritime Association and got information as to the period of time involved. Thereupon, Stanley Weir himself went to the PMA office and talked to PMA representatives on the Class B panel of the JPLRC and got information from them as to the period of time over which it was asserted he had failed to meet the 70% availability standard and as to the exact details of how that standard was applied. Thereupon Local 10 had discussions of his case with PMA and wrote Stanley Weir telling him that should appear at the hearing and present the facts and indicating that, in view of the information developed, it appeared that he would be successful in getting the deregistration stricken from his record.

128. On April 24, 1963, Stanley Weir did appear before the JPLRC and did present facts as to the period of time that was under consideration by the JPLRC on the basis of data it had developed. It apeared that his actual availability had been between 69% and 70% in one thirty-day

period and that his sunburned condition after his vacation made him unable to perform longshore work for some days, so that his record showed that he fell below 70% availability. Upon Stanley Weir's presentation to the JPLRC, it reversed the deregistration.

129. In May, 1963, Stanley Weir learned that the JPLRC was apparently considering whether or not he had dropped an excessive number of LMO hours and whether or not he would be promoted to the coveted seniority status of the Class A fully registered longshoreman. He thereupon started a series of written communications to the PMA, to the ILWU and to Local 10, asserting that he had not dropped an excessive number of LMO hours and protesting the procedures being used.

130. On May 14, 1963, Stanley Weir sent a telegram to William Chester at the ILWU and John Trupp at the PMA.

131. Either before or shortly after Stanley Weir's first such written communication to PMA and the ILWU on this subject, he had met with Asher Harer, who was acting as ombudsman-advocate for the limited registration Class B men who were in situations similar to that of Stanley Weir. The two reviewed in detail the issues that had been raised on this subject. Thereafter, on May 16, 1963, Asher Harer reported to the Local 10 membership that he had studied a number of cases, including that of Stanley Weir, and that he disagreed with the conclusions of the union representatives on the B-list panel of the JPLRC that Stanley Weir had dropped an excessive number of LMO hours.

132. As a result of the questions raised by Stanley Weir directly and by Asher Harer and others, Local 10 directed that its representatives on the B-list panel of the JPLRC make a double check as to every man who appeared to have dropped an excessive number of LMO hours to make certain that no man was denied promotion because of an

erroneous decision as to the facts involved. Thereafter, such double checks were made by the union representatives on the JPLRC.

133. At the same time the employer representatives on the JPLRC made independent checks with respect to every man who was initially determined to have dropped an excessive number of LMO hours. This was to avoid any factual errors. By early June these reviews had been completed and changes made in the records as to the dropping of LMO hours. Adjustments were made for errors that were found.

134. On May 14, 1963, Stanley Weir objected to the promotion of some of the limited registration Class B longshoremen prior to the JPLRC's issuing a determination in his favor with respect to his case. He said he should be promoted, that he could show that he had not dropped an excessive number of LMO hours, and that he should be promoted with the others who had been found to have met the explicit promotion standards and at the same time.

135. On May 17, 1963, the Joint CLRC set aside the action of the JPLRC that had promoted 408 limited registration Class B men to the status of a fully registered Class A longshoreman and directed that the JPLRC make initial determinations as to all of the applications and then promote, at the same time, all of the men who met the explicit promotion standards.

136. On June 10, 1963, Stanley Weir made a further written challenge to the procedure and to the JPLRC conclusions for a determination sustaining the earlier findings that he had dropped an excessive number of hours. His letter to this effect of June 10, 1963, was on or shortly after the date on which the JPLRC members informally concluded that he had dropped an excessive number of LMO hours after having concluded its double check process.

137. The JPLRC gave notice in the minutes of June 17, 1963, which were made public to the longshoremen, asking that facts be submitted to it that might indicate that any limited registration Class B longshoreman had been approved for promotion although he had failed to meet one or more of the explicit promotion standards. It stated that any such promotion would be set aside on establishing such facts.

138. After Stanley Weir received his notice of deregistration under date of June 17, 1963, he continued to send written communications to the union and to the PMA asserting that he was without knowledge as to the issues that were involved in his case and so was not able to prepare his case. This Court finds that Stanley Weir, previous to these communications, had reviewed these issues in detail with Asher Harer and that Asher Harer had prepared detailed documentary material to support Stanley Weir's contentions that he had not dropped an excessive number of LMO hours. When Stanley Weir appeared before the JPLRC at Pier 24 on July 11, 1963, he gave full explanations of why he should not be charged with dropping any LMO hours, except for 2½ hours, and the report of Asher Harer with respect to his case was read to the JPLRC. Stanley Weir's oral presentation and the Asher Harer report were substantially the same.

139. The evidence in this record fails to show that Stanley Weir was in any way prejudiced in the preparation and presentation of his evidence and his argument in support of his grievances. He, like all the other plaintiffs, had full opportunity to learn of the factual issues that led to the notice of June 17, 1963, that he had been deregistered, to gather his evidence, to marshall his facts, to present his argument, and he had the benefit of the extraordinary assistance of Asher Harer in preparing his case for the grievance-arbitration process. There is no showing of any

merit in the technical claims of insufficiencies in the procedures used under the ILWU-PMA contract. Stanley Weir had a due, fair, appropriate and reasonable hearing.

140. Evidence was offered that there was rumor or gossip on the San Francisco waterfront that Stanley Weir had been selected for deregistration by the ILWU and the PMA because he was a thorn in the side of Harry Bridges, then president of the ILWU, and Paul St. Sure, then president of the PMA. Evidence was offered through deposition testimony from the president of Local 13 of the ILWU in Los Angeles, Curt Johnston, that this rumor had been told to him by a PMA employe in Los Angeles, Robert Hall. However, Robert Hall testified in the Court and denied that he had ever made such a statement to Curt Johnston. The Court credits the testimony of Robert Hall and finds that he did not relate this rumor or gossip to Curt Johnston. The Court notes that Stanley Weir testified that this rumor stated a hypothesis that he felt could be drawn from the evidence, but he testified further that this was not his conclusion from the evidence. From all of the evidence in the record not subject to legal objection, the Court finds (a) that there is not proof in this record that Stanley Weir was considered to be a thorn in the side of Harry Bridges by Harry Bridges or Paul St. Sure or by any agent of the ILWU, Local 10 or the PMA, or that Stanley Weir was considered to be a thorn in the side of Paul St. Sure by Paul St. Sure or Harry Bridges or by any representative of the ILWU, Local 10 or the PMA, and (b) that it has not been established that any invidious or arbitrary or discriminatory considerations or any hostility, animosity, malice, ill-will, invidiousness, bad faith, or "frame-up" contributed in any way to the decision that Stanley Weir stand deregistered or to the decision that any of the other plaintiffs or the plaintiffs as a group or the limited registration longshoremen who were deregistered as a group, were

deregistered for such reasons. It finds to the contrary, that Stanley Weir and each of the other plaintiffs was deregistered for good and sufficient cause.

141. In their Fourth Amended Complaint, plaintiffs alleged that they had exhausted all appeals and had "been totally deregistered by a final decision made by the Joint Coast Labor Relations Committee on November 20, 1964". The Court finds that the ILWU-PMA contract gave Stanley Weir and each of the plaintiffs or any group of two or more or all of the plaintiffs a remedy before the Coast Arbitrator by appeal with respect to all of the issues decided by the Joint Coast Labor Relations Committee on November 20, 1964, and that they and each of them refused to use this remedy.

Except as found hereinabove, this Court specifically finds on all the evidence not subject to legal objection that plaintiffs have failed to establish each and every of their allegations in their Fourth Amended Complaint.

From the foregoing Findings of Fact the Court draws the following

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and the subject matter of this action under § 301(a) of the Labor-Management Relations Act, 29 U.S.C. § 185, and 28 U.S.C. § 1337.

2. Defendant Pacific Maritime Association is an employer within the meaning of § 2(2) of the Act, 29 U.S.C. § 152(2). Defendant International Longshoremen's and Warehousemen's Union is the certified collective bargaining representative for all longshoremen employed by PMA and is recognized as such under § 2(5) of the Act. 29 U.S.C. § 152(5). Defendant International Longshoremen's and

Warehousemen's Union Local No. 10 is the chartered local affiliate of the International in the Port of San Francisco.

3. Plaintiffs have standing to bring this action.

4. At all times relevant to this case, the ILWU and the PMA were parties to the ILWU-PMA collective bargaining contract.

5. As the certified collective bargaining representative, defendant International Longshoremen's and Warehousemen's Union owed to all persons in the bargaining unit—and to the plaintiffs at all time material to their claims—a statutory duty of fair representation to represent all members of the bargaining unit fairly and to refrain from arbitrary, discriminatory or bad faith conduct.

6. The exclusive representative for collective bargaining purposes of employes in a collective bargaining unit has no duty to try to assist an individual employe in covering up the true facts with respect to an issue involving him that is being considered in the grievance-arbitration process.

7. The explicit promotion standards were authorized by, and adopted in accordance with, § 17.851 of the Pacific Coast Longshore Agreement, a basic contract document of the ILWU-PMA collective bargaining contract, were duly and properly adopted by the parties to the ILWU-PMA collective bargaining contract, and became part of that contract as an explication of the terms of the 1958 Memorandum as to Registration and Deregistration, another part of that contract.

8. The ILWU and its Local 10 provided fair representation to the members of the bargaining unit in the negotiation of the explicit promotion standards. These negotiations were carried on without breach of the duty of fair representation and without malice or hostility or animosity, ill-

will or bad faith and without any arbitrary, unreasonable, invidious, discriminatory or bad faith conduct.

9. The provisions of the explicit promotion standards were fair, reasonable, rational and relevant terms dealing with misconduct that was known to be misconduct for which deregistration might be the penalty at the time that the individual limited registration longshoreman engaged in misconduct. The terms of the explicit promotion standards are fair and not capricious or abritrary.

10. The true purpose or real motivation of the parties to the ILWU-PMA contract in formalizing the explicit promotion standards and in implementing them was to meet the industry's increasing need for a greater number of steady, highly qualified, and responsible longshoremen. To that end, the defendants jointly promulgated appropriate, fair and reasonable guides for the selection of the best-qualified employes.

11. The ILWU and its Local 10 provided fair representation to the members of the bargaining unit in the implementation of the explicit promotion standards. The implementation of these standards was carried on without breach of the duty of fair representation and without malice or hostility or animosity or ill-will or bad faith and without any arbitrary, unreasonable, invidious, discriminatory or bad faith conduct.

12. The employer owes no duty of fair representation to the employes working for it or in the collective bargaining unit of which its employes are members or any of them. The employer is not liable to its employes for the consequences of its engaging in hard bargaining with the union in an effort to get a bargaining contract that is for the employer's best interests or in implementing that contract.

13. The procedures for handling the grievances of the plaintiffs were fair, due, appropriate and reasonable for the

disposition of the issues in the grievance-arbitration process with respect to the deregistration notices sent to the plaintiffs.

14. The ILWU and its Local 10 provided fair representation to the members of the bargaining unit in the adjudication of the grievances of the plaintiffs with respect to the explicit promotion standards and their implementation. These grievances were adjudicated without breach of the duty of fair representation and without malice or hostility or animosity or ill-will or bad faith and without any arbitrary, unreasonable, invidious, discriminatory or bad faith conduct.

15. The plaintiffs are not entitled to relief in this Court with respect to their deregistration because they failed and refused to exhaust the grievance-arbitration procedure of the ILWU-PMA contract, which they could have exhausted by taking their grievances to the Coast Arbitrator after receiving the notices of the decision of the Coast Labor Relations Committee on November 20, 1964, which were dated December 18, 1964.

16. The grievances of the plaintiffs claiming that they did in fact satisfy the explicit promotion standards were not meritorious grievances.

17. The ILWU and the PMA are authorized under the law, and under the ILWU-PMA collective bargaining contract, to maintain the distinctions existing between limited registration Class B longshoremen having junior seniority and fully registered Class A longshoremen with a superior seniority status.

18. Neither the ILWU nor its Local 10 was in breach of the duty of fair representation in failing to obtain agreement by the PMA to strike out of the ILWU-PMA contract any of the provisions for registration status that had been

in effect since 1934, or that were adopted prior to December 31, 1964.

19. The dissatisfaction of the plaintiffs with the explicit promotion standards did not establish that there was a breach of the duty of fair representation.

20. Judgment is to be rendered in favor of defendants and against plaintiffs, with costs to the defendants.

Dated: August 27, 1976

/s/ GEORGE B. HARRIS,

United States District Judge

Appendix D

In the United States District Court
For the Northern District of California

Civil No. 42284 GBH

George B. Williams, et al.,
Plaintiffs,

vs.

Pacific Maritime Association, et al.,
Defendants.

[Filed October 27, 1976]

JUDGMENT

This cause came on regularly for trial before the Court sitting without jury, on January 14, 1974, and continued with the taking of live testimony until July 3, 1974.

The plaintiffs were represented by Arthur Brunwasser, Esq., and Fred Kurlander, Esq., Defendant Pacific Maritime Association was represented by Richard Ernst, Esq., Dennis Daniels, Esq., and Kendall De Bevoise, Esq., of the firm of Ernst & Daniels. Defendants International Longshoremen's & Warehousemen's Union and ILWU Local 10 were represented by Richard Gladstein, Esq., and Norman Leonard, Esq., of the firm Gladstein, Leonard, Patsey & Andersen.

The trial was bifurcated, and this first stage was concerned with the issue of liability only. Oral and documentary evidence was introduced by and on behalf of each of the parties. Thereafter, counsel for all parties prepared a written Stipulation as to Testimony which was filed on

February 28, 1975. Subsequently, further documentary material was incorporated into the record.

After all parties had rested, the parties filed their post-trial briefs and proposed Findings of Fact and Conclusions of Law, and the cause was then submitted to the Court for decision.

The Court has considered all the evidence and testimony adduced at the trial and in the Stipulation and has studied the briefs of counsel.

The Court has heretofore filed its Findings of Fact and Conclusions of Law herein. Said Findings of Fact and Conclusions of Law were thereafter amended in immaterial particulars in order to correct certain clerical errors, which were discovered therein subsequent to their filing. These Findings of Fact and Conclusions of Law as amended are by this reference incorporated into this Judgment at this point as though they were fully set forth here.

Based upon the foregoing, it is hereby Ordered, Adjudged and Decreed that judgment is entered in favor of defendants and against plaintiffs and that the action is dismissed upon the merits. Costs are awarded to the defendants against the plaintiffs upon the filing of a cost bill pursuant to the appropriate statutes and rules.

Dated: October 27, 1976

GEORGE B. HARRIS

Judge of the
United States District Court

Appendix E

Statutory Provisions Involved

Section 7 of the National Labor Relations Act, 49 Stat. 452 (1935), as amended, 29 U.S.C. § 157 (1958), provides:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3)."

Section 8 of the National Labor Relations Act, as amended, 61 Stat. 140 (1947), 29 U.S.C. § 158 (1958), provides, in pertinent part:

"(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

• • •

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) To restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: . . .

• • •

"(3) to refuse to bargain collectively with the employer, provided it is the representative of the employees subject to the provisions of section 9(a); . . ."

• • •

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, . . ."

Section 9(a) of the National Labor Relations Act, 61 Stat. 143 (1935), as amended, 29 U.S.C. § 159(a) (1958), provides:

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment."

Section 10(a) of the National Labor Relations Act, 49 Stat. 453 (1935), as amended, 29 U.S.C. § 160(a) (1958), provides:

"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise. Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry

(other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

Section 301(a) of the Labor-Management Relations Act, 1947, 61 Stat. 156, 29 U.S.C. § 185, provides:

"Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Appendix F

(Exhibit N)

I.L.W.U. Local 10
Minutes of "B" Men Meeting
Friday, July 10, 1959
301 Beach Street

Meeting convened at 7 P.M.
Vice-Pres. R. Rohatch, presiding.
Officials in Attendance:
H. Bridges, Int'l. Pres.
Wm. Chester, Reg. Dir.
Geo. Walsh, Temp. Secretary

A. James
Frank Stout
T. Silas
— Loc. 10 Bus. Agents

ALLEGIANCE to the flag pledged.

Vice-President Rohatch introduced International President Bridges.

Brother Bridges informed the "B" men that rules and regulations governing the work in the industry have been drawn up to protect the men already working in the industry and at the same time protect new men coming into the industry.

The Union is duty bound to protect all men working in the industry. Brother Bridges pointed out that the manpower needs of the industry will be determined by the amount of cargo going on and off the docks and ships. He reminded the "B" men that "A" men will be given first crack at work available. What work remains unfilled by "A" men will be given to "B" men.

"Most industries", Brother Bridges said, have "apprentice" periods of employment for new men and almost always at a lower pay scale. In this industry a new man on entering the industry receives the same rate of pay as men who have long seniority in the industry.

The policy of the International is to develop a program whereby every man in the industry whether he be an "A" man or "B" man gets sufficient work opportunities. Brother Bridges emphasized that the Union expects strict observance of all rules. Repeative and frequent violations of rules will make it more difficult for a "B" man to advance to the "A" list.

Brother Bridges concluded by saying that this is a Union where the rank and file get more protection—more security and more voice in the industry.

Chief Dispatcher Mike Samaduroff — Brother Samaduroff read to the "B" men a list of rules and regulations (copy attached to Minutes.)

Following Brother Samaduroff's report, questions were asked by "B" men concerning meaning and application of rules.

Brother Chester reminded the "B" men that rules and regulations and further additions to the "B" List will be determined by the Men on the "A" Registration List.

Business Agent Frank Stout addressed the meeting and stated that "B" men when dispatched as a "swing" man are not considered as a gang member and therefore do not relieve the "hook-on" men. This rule also covers "A" men. When a "B" man is dispatched to a gang then he shall relieve under the hook (on a long-gang operation).

Brother Stout also cautioned "B" men on pilfering rules which provide that a "B" man caught pilfering will be removed from the industry. He stated that no "B" man can remain on the job during an overtime day.

Business Agent T. Silas stated that whenever a "B" man feels that work is being performed in violation of the contract or safety rules and no regular steward is available, then he should call the Union Officers and request a Business Agent. He reminded the "B" men that any man fighting in the Hiring Hall may result in removal from the "B" List.

WELFARE PLAN

Local 10 Officers have received no information to date on what progress has been made to include "B" men under the general Welfare plan.

COAST GUARD PASSES

The Union Officers advised "B" men to consult the Union Attorney if they encounter difficulty in securing their Coast Guard Passes.

Brother William Chester, Regional Director, congratulated "B" men for excellent attendance at the July 5th parade. He hoped that the men now on the "B" List will all be "A" men in the near future. The elevation from the "B" List to the "A" List can only be determined by the future development in the industry.

Brother Chester proposed to the "B" men:

That "B" men shall pay $1.00 for the month of June and $1.00 for the month of July for their share in paying for the costs of Coast Negotiations. Such payment shall be in addition to their regular monthly payment.

M/S/C TO ACCEPT PROPOSAL AS SUBMITTED BY BROTHER CHESTER.

Standing vote was unanimous.

Meeting adjourned at 9:20 P.M.

Respectfully submitted,

GEORGE WALSH,
Secretary Pro Tem

GW:jo
opw34cio

Meeting No. 29-A—1959

Minutes of Special Meeting of the
Longshore Labor Relations Committee
of San Francisco

June 17, 1959

Committee met at 2:00 P.M. at 16 California Street.
Present:

For Employers	For ILWU, Local 10
J. R. Snyder, Secty.	W. Chester
J. Trupp	C. Hoffman
J. Edwards	G. Pickering
	R. Rohatch

This was a meeting of the special Labor Relations Committee working on the Class "B" registration.

Committee discussed the dispatching rules governing Class "B" men and felt that certain rules should be clarified to the men as follows:

1. Class "B" men are not permitted to volunteer or to choose jobs, but must take the jobs handed or assigned to them at the dispatching windows.

2. Men who refuse or flop jobs or fail to show on the job, cannot work on the same day or night shift for which they refused or flopped, and must add 6 hours to their accumulated low-man-out sign-in hours.

3. Class "B" men must work or be available 70% of each 30-day period.

(a) Class "B" men must appear before the Longshore Labor Relations Committee to obtain leaves of absence for periods of time exceeding two weeks.

4. If a man is dispatched in error, or there is an over-dispatch of men to a job, such men will sign in at the same hours on which they were originally dispatched, provided

they did not receive other work or pay on that shift. (Class "B" dispatch slips will not be signed or ok'ed for another job for the following shift.)

Disciplinary Action for Class "B" Men

The following rules apply to Class "B" men:

1. Guilty of pilferage: Automatic deregistration

2. Guilty of smoking on the job in unauthorized places: Same penalties as Class "A"

3. Guilty of intoxication:

First offense—30 days
Second offense—Mandatory de-registration

4. Guilty of assault or battery, or doing bodily harm:

Automatic suspension and de-registration

5. Misconduct in the Hall or refusal to work as directed; refusal to take orders; leaving the job without authorization; creating disturbances; fighting or assault; or general improper attitude, including arriving late on the job or leaving the job early:

Severe disciplinary action, depending on severity of offense and number of previous offenses, by the Labor Relations Committee. Such action to count against the individual when consideration is given to promotion to Class "A" registration.

6. Failure to show on the job or replace himself:

Two weeks suspension (first offense).

7. No work or availability for 30 days without bona fide leave of absence:

Automatic de-registration.

Instructions to the Chief Dispatcher

1. A daily record of individuals who refuse a job or flop is to be kept for the Labor Relations Committee.

2. When "B" men are needed on nights they shall be taken in groups starting at the top of the list. The number to be established by the LRC. The men to be rotated every 30 days.

3. The Chief Dispatcher shall keep a record of the men who show an improper attitude or misbehavior to the dispatchers; such record to be passed on to the Labor Relations Committee.

4. Dispatchers are instructed to follow all LRC rules of dispatch regarding Class "B" men.

Meeting adjourned at 4:30 P.M.

Approved July 2, 1959.

/s/ George Pickering /s/ J. R. Snyder

San Francisco Port Labor Relations Committee Rules and Regulations Governing Low-Man-Out System of Dispatch for Individual Longshoremen

In the dispatching of men to longshore work fully registered men (Class "A") shall have preference; limited registration men (Class "B") shall have second preference in accordance with LMO Rule 13 (a). No casual worker shall be sent out when there is any man on the registered list (Class "A") or on the limited registration list (Class "B") qualified, ready, available and willing to do the work.

1. Hours worked start at zero (0) and shall be computed on accumulated actual hours time basis. Banana time to be omitted. Hours will revert to zero (0) the first Monday of each payroll quarter.

2. All traveling time to be counted in computing hours worked.

3. No registered man shall be dispatched from the Hall unless he is first signed in on the proper "sign-in" sheet.

4. DAY WORK: To be eligible for the first morning dispatch longshoremen must sign in a category on the day list by 7:30 p.m. the night previous. After 7:30 p.m. and until 7:00 a.m. the following morning, men may sign in and will be dispatched after the first morning list has been exhausted. After 7:00 a.m. men may sign in on what will be known as the late list. Men will be called from this list if needed. All men not dispatched including men on the late list will be carried over for the following day.

SUNDAY AND HOLIDAY SIGN-INS FOR DAY WORK: When the dispatching hall is open on Sunday and Holiday schedule, longshoremen may sign-in up until 8:30 a.m. for the first morning dispatch on the following day. They may continue to sign-in up until 7:00 a.m. on the day following the Sunday or Holiday and will be dispatched after the first morning list has been exhausted.

NIGHT WORK: To be eligible for the first night dispatch, longshoremen must sign in on the night list by 3:00 p.m. After 3 p.m. and until 5:00 p.m. men signing in will be considered as on the late list, and will be dispatched if needed. All men not dispatched including men on the late list will be carried over for the following night. Men signing-in after 5:00 p.m. are making themselves available for work the following night.

SUNDAY AND HOLIDAY NIGHT WORK: Longshoremen may sign in until 8:00 a.m. on Sundays or Holidays for work that night and will be eligible for the first dispatch. Men signing in after 8:00 a.m. will be considered on the late list and will be dispatched if needed.

EXCEPTION TO REGULAR SIGN-IN TIME: When an individual working off the Low-Man-Out system is ordered to supper and to return to work, and therefore is unable to sign in for availability the next day, he may, by personally reporting in to the dispatcher at the Hall the next day by 6:30 a.m., be signed-in on the master sheet if he advises the dispatcher what gang he was working with, the name of the company, and the time he was released from the job on the previous night. Violators of this rule will fall under the penalties as provided in these rules.

5. All men signing in on any given list whether they have just left a gang, are returning from vacation or changing from another category will use the average hours of the category into which they are signing if their own accumulated LMO hours are under the average hours. If their own accumulated LMO hours are over the average hours of the category, men must sign in with their actual accumulated LMO hours. If a gang member leaves a gang to sign in all his hours count, voluntary hours included.

6. Average hours are based on the number of men on the first sign-in list for any given dispatch.

EXAMPLE: If there are 100 men on list, it is divided in half and the 50th man is the average. First man has 50 hours; 50th man has 55 hours; the 100th man has 70 hours. Average hours are 55 and each day's average is carried over. If yesterday's average was 50, you add the difference, making today's average 55 hours. You do not add over 8 hours to the previous average, as that constitutes a day's work shift.

7. Any longshoreman who fails to report to the dispatcher after his number is called three times shall add six hours to his signing-in time and must sign in again. In other words, when a man does not answer when his number is called, it is considered the same as working six hours. Men who miss their number when called but take a voluntary job for the same day or night when they missed their work opportunity need not add six hours for missing their call but must add the time worked to their hours when signing in the next time.

8. The dispatchers will give no information as to the location of the job, length of time the job will last, or the type of cargo to be handled prior to handing out the dispatch slip.

9. Longshoremen refusing a job or accepting a job at the dispatch window and then turning slip back in shall be charged with six hours. If they take a job later that day, either voluntary or otherwise, they must add the six hours charged against them plus the time worked when signing in again.

MEN TURNING JOB BACK: Men dispatched by receiving a ticket are to replace themselves only after reporting to the job. Failure to do this and trying to turn the

ticket back to a dispatcher will result in disciplinary action being taken.

10. Any longshoremen, with less than the average hours of the category, who does not make himself "available" for work, or who misses a job opportunity or "flops" must take the average hours of the category when he signs in. If his accumulated LMO sign-in hours are over the average hours of the category, he shall sign in with his total accumulated LMO hours. Availability means being signed in on the master sheet. A missed plug or "flop" constitutes non-availability.

11. Any man signing in whose accumulated LMO hours are 10 or more hours below the average of the category, shall have his hours changed by the dispatcher to the average hours of that particular category for that day or night dispatch period.

12. Longshoremen eligible under the Labor Relations Committee's Rules must remain in any category which they sign into for a period of 30 days and nights and likewise shall remain in either the day or night section where they have signed in for a period of 30 days or nights. Men shall not sign in under two categories at the same time, including the Banana Board and another board.

13. When any given category is exhausted, the next appropriate category shall have the first opportunity to volunteer for the work offered providing the men in that category are otherwise eligible under the Labor Relations Committee Rules and the men with the lowest hours in that category will be dispatched first, and the category will be exhausted before calling for volunteers from another category. Time worked on these volunteer jobs shall be added to the man's hours. These volunteer jobs shall be for one day only and will be filled the following day or night from men in the category required by the job.

(A) Men shall be dispatched in the following order:

1. Class "A" low man in category called.

2. Class "A" late list in category called.

3. Class "A" low men in slowest moving category called.

4. Class "A" gangmen listed on daily sign-in sheet.

(a) Gang men, who are members of gangs not employed during a specific shift, may sign in for work on "gang sign in" sheets from 6:00 a.m. to 7:30 a.m. on the day shift and from 4:00 p.m. to 5:00 p.m. on the night shift.

5. Class "B" longshoremen listed on Class "B" master sheet.

6. Class "A" men who missed their call or "flopped" in category called.

7. Class "A" men who have refused a job or accepted a job and replaced themselves.

8. Class "B" late sheet.

14. SQUARING OFF: Any longshoreman who wants a day off in any one calendar (payroll) week without losing his work opportunity may do so by "squaring off". When squared-off a man's number will not be called. Squaring-off is done by drawing a square around a man's number on the List. This will enable men to have a scheduled day off. No man below average the day before he desires a day off may square-off. No squaring off on straight time day preceding Saturday or Holiday.

Men are entitled to one day off in any one payroll week and the first day missed during the week of work opportunity shall be considered their scheduled day off. If a man has not been available or has "flopped" he is not eligible to square-off for the duration of that particular payroll week.

15. No man shall square-off during the dispatch period.

16. To be eligible for work on Holiday or overtime day, you must be signed in (available for work) or working the day before said days. Any member working six consecutive days can then sign in on the overtime day, or he may work if he so desires.

17. "Checks" will be made each week and violators will receive the following penalties:

First Offense—30 days off
Second Offense—6 months off
Third Offense—Cancellation of Registration.

SPECIAL RULES APPLYING TO CLASS "B" MEN ONLY

(A) Class "B" longshoremen will be dispatched according to applicable current LRC Low-Man-Out rules.

(B) Class "B" longshoremen will sign and work out of a category called the Class "B" board. They will work on either the day or night shift in accordance with assignment by the Ckief Dispatcher.

(C) Class "B" longshoremen dispatched in any category shall be dispatched for one shift only, unless Class "A" men are not available. The Chief Dispatcher is hereby authorized by the Labor Relations Committee to determine that Class "B" men may remain on the job from shift to shift as required by the employer if the work load of the port so justifies. This exception does not apply on overtime days.

These are the only and official rules on the low-man-out system as revised by the Labor Relations Committee up to December 30, 1958. If new rules or changes are needed they will be issued by the Committee.

THERE ARE NO OTHER RULES.

5/27/59

Appendix G

(Exhibit CL)

Longshore Labor Relations Committee
of San Francisco

St. Clair Building
16 California Street

Dispatching Hall
Bulkhead
Piers 16-18

San Francisco 11, Calif.
February 25, 1959

Dear Sir:

You are being given further consideration as an applicant for registration as a Class "B" longshoreman in the port of San Francisco, and you are hereby requested to report for an interview with this Committee, in accordance with the procedure governing Class "B" registration rules and regulations, on ..... at Room A 26—ground floor of Ferry Bldg. (south wing).

You are required to bring with you at that time your Social Security card; also your birth certificate, military discharge, if any, or in lieu thereof, suitable evidence that will be satisfactory to the Committee as to your date of birth. If a naturalized citizen, bring your naturalization papers. If an alien, bring your alien registration papers.

If you are successful in passing the interview, you will next be required to take a thorough physical examination. The cost of the physical examination will be borne by the Joint Labor Relations Committee. If you are accepted for registration, you will be required to pay initially a registration fee of $8.00 to cover a portion of the other costs

of registration, payable prior to registration, and will be required to pay another $8.00 after 60 days following registration as a condition to retaining your registration and as a further payment toward the other costs of the registration procedure.

If you are registered and make the two payments of your registration fee, your registration will nevertheless be subject to termination, revocation or other action by the Joint Labor Relations Committee.*

As a matter of courtesy, we would ask you to advise this Committee if you do not expect to be present at the time designated for oral examination, or if you know that you cannot pass a rigid and thorough physical examination.

We wish to further advise you that should you fail to appear at the time and place designated for your interview, or at the time and place designated for your physical examination, you will be automatically disqualified and stricken from the list as far as further consideration for registration is concerned.

Very truly yours,
J. R. Snyder
Secretary

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*A registered man, if he is not a union member, is required under the contract to pay to the union toward the support of the dispatching hall a sum equal to the prorata share of the expense of support of the hall paid by each member of the union. Failure to make such payments or to abide by other provisions in the contract, working rules or determinations of the Joint Labor Relations Committee can be cause for suspension or loss of registration.

Appendix H

(Exhibit 408)

SUMMARY OF STANDARDS

The following is a summary of the standards adopted and used by the Joint Port Labor Relations Committee in determining whether Class "B" longshoremen should be advanced to Class "A" registration:

1. Any Class "B" longshoreman found to have 10 or more hours of Low Man Out violations shall be considered ineligible for advancement to Class "A" registration.

2. Any Class "B" longshoreman found to have been late in the payment of his pro-rata eight or more times (or six or more times with an otherwise blemished record) shall be considered ineligible for advancement to Class "A" registration.

3. Any Class "B" longshoreman found to have failed to meet the 70% availability requirement for any 30-day period shall be considered ineligible for advancement to Class "A" registration.

4. Any Class "B" longshoreman who has been the subject of one or more employer complaints for intoxication or pilferage that the Joint Port Committee has sustained shall be considered ineligible for advancement to Class "A" registration.

5. The standards shall be applied uniformly and no exceptions shall be made.

Appendix I

(Exhibit 7)

State of California
Department of Employment

California Unemployment Insurance Appeals Board

Decision of the Referee
In the Matter of:

James U. Carter, et al
1267 Page Street, Apt. F
San Francisco, California
Claimants
(See Appendix)

SSA No. 549-30-4015, et al
(See Appendix)

Pacific Maritime Association
16 California Street
San Francisco, California
Employer

Account No. 002-3027

San Francisco Referee Office

Case Number: SF-3033

Time and Place of Hearing:
November 6, 1963
January 13, 15, 17, 20, 1964
February 3, 4, 5, 6, 7, 1964
March 2, 6, 30, 31, 1964
April 1, 1964
San Francisco, California

Parties Present:
Claimants
Employre
Department

The claimants involved herein are set forth on the attached appendix which is made a part hereof as though fully set forth in the decision. In those cases marked with an asterisk the employer appealed from the determinations and rulings of the department holding the claimants were not subject to disqualification under section 1256 of the code and that the employer's reserve account would be subject to charges. In the remainder of the cases the claimants appealed from the determinations of the department holding them subject to disqualification under section 1256 of the code.

In the latter group of cases the department also issued rulings relieving the employer's reserve account of charges.

Oral argument was presented to the referee by the claimants, the employer and by the department in San Francisco on April 1, 1964.

The circumstances and facts involved in the appeals herein being the same or similar and no substantial right of the parties being prejudiced thereby, said appeals are herewith consolidated for decision purposes as provided in section 5029 of Title 22 of the California Administrative Code.

STATEMENT OF FACT

The claimants herein have all been employed in the maritime industry in the San Francisco area since 1959. All said claimants have worked in the classification of limited registered longshoremen, otherwise known as Class B longshoremen.

(See Appendix)

DATE OF MAILING: June 4, 1964

The employer herein is the Pacific Maritime Association, referred to hereinafter as the PMA.

Although the claimants are not members of Local 10 of the International Longshoremen and Warehousemen's Union, referred to hereinafter as the union or as the ILWU, they utilized the hiring hall jointly operated by the union and by the PMA, and for this service paid a prorata share of the costs of operating the hall.

Collective bargaining contracts have existed over the years between the ILWU and the PMA, and the current contract is a continuation of previous contracts and covers the period June 16, 1961 to July 1, 1966. This contract, known as the Pacific Coast Longshore Agreement, provides in parts pertinent to the issues herein as follows:

"8.1 Dispatching Halls.

"8.11 The hiring and dispatching of all longshoremen shall be through halls maintained and operated jointly by the International Longshoremen's and Warehousemen's Union and the Pacific Maritime Association in accordance with the provisions of section 17. There shall be one central dispatching hall in each of the ports with such branch halls as shall be mutually agreed upon. All expense of the dispatching hall shall be borne one-half by the local union and one-half by the employer.

"8.12 Any longshoreman who is not a member of the Union shall be permitted to use the dispatching hall only if he pays his prorata share of the expenses relating to the dispatching hall, the Labor Relations Committee, etc. The amount of these payments and the manner of paying them shall be fixed by the Joint Port Labor Relations Committees.

• • •

"'8.3 Registration.

"8.31 The Joint Port Labor Relations Committee in any port subject to the ultimate control of the Joint Coast Labor Relations Committee, shall exercise control over registered lists in that port, including the power to make additions to or subtractions from the registered lists as may be necessary. In each port there shall be maintained a list of longshoremen showing their registration status under this Agreement. When objecting to the registration of any man members of the Joint Port Labor Relations Committee shall be required to give reason therefor.

• • •

"8.4 Preference of Employment.

"8.41 First preference of employment and dispatch shall be given to fully registered longshoremen who are available for employment covered by section 1 of this Agreement in accordance with the rules and regulations adopted by the Joint Port Labor Relations

Committee. A similar second preference shall be so given to limited registered men. The Joint Coast Labor Relations Committee shall be authorized to effectuate such preferences in such manner and for such times and places as it determines in its discretion.

"8.42 Dispatching of men and gangs shall be under the principle of low-man, low-gang, first to be dispatched, except where local dispatching rules provide otherwise for dispatching of special skilled men and gangs.

* * *

"13.1 There shall be no discrimination in connection with any action subject to the terms of this Agreement either in favor of or against any person because of membership or non-membership in the Union, activity for or against the Union or absence thereof, or race, creed, color, national origin, or religious or political beliefs.

* * *

"17.1 Joint Labor Relations Committees.

"17.11 The parties shall establish and maintain during the life of this Agreement a Joint Port Labor Relations Committee for each port affected by this Agreement, four Joint Labor Relations Committees, and a Joint Coast Labor Relations Committee. Each of said Labor Relations Committees shall be comprised of three or more representatives designated by the Union and three or more representatives designated by the Union and three or more representatives designed by the employers. Each side of the Committee shall have equal vote.

"17.12 The duties of the Joint Port Labor Relations Committee shall be:

"17.121 To maintain and operate the dispatching hall.

"17.122 To exercise control of the registered lists of the Port as specified in 8.3.

"17.123 To decide questions regarding rotation of gangs and extra men.

"17.124 To investigate and adjudicate all grievances and disputes according to the procedure outlined in this section 17. . . ."

* * *

The issue affecting each of the claimants herein has to do with the deregistration of such claimants and their consequent ineligibility to continue working as longshoremen in the maritime industry. The aforementioned sections of the Agreement serve to provide for the establishment of the Joint Port Labor Relations Committee and for the registration of longshoremen either on a fully registered basis or on a limited registration basis. Under the authority provided by the aforementioned sections as they were set forth in previous agreements between the ILWU and the PMA a "memorandum" was prepared on March 18, 1958 establishing the rules covering registration and deregistration of longshoremen in the Port of San Francisco. This memorandum provides in paragraph 1 that longshoremen shall fall into two categories: (A) registered longshoremen, and (B) limited registration longshoremen.

Paragraph 3 of the aforementioned memorandum provides in detail for a "limited registration list" in the following language:

"(a) A limited registration list (Class B) shall be jointly prepared by the parties.

"(b) The limited registration list (Class B) shall be revised annually (or semi-annually if the Joint Labor Relations Committee so determines) so that the names thereon are arranged in sequence on the basis of availability for all work dispatched as shown on the records of the San Francisco Dispatch Hall, the Joint Labor Relations Committee, and the Central Pay Office for the preceding year. A man will be given credit for 100-percent availability in any week in which he was either signed in or was at work on six days and had no flops. Availability is willingness and

availability to take any type of work at any time it is offered and regardless of the duration of the job.

* * *

Paragraph 6 provides for joint action on applications:

"(a) Applications for registration and for limited registration must be approved by both parties. Consideration shall be given to each applicant's work history and all phases of his qualifications to do all the work of longshoremen.

"(b) De-registration for cause from the limited registration list (Class B) or from the registration list (Class A) shall exclude a man from a place on either registration list.

* * *

Paragraph 7 provides for additions to the list of fully registered longshoremen:

"(a) Additions to the registration list (Class A) shall be made solely on the basis of applications from the limited registration list (Class B). The men at the top of the limited registration list shall be given in sequence first opportunity to apply for full registration. Additions shall be made after notice, in the number and at the time fixed by the Joint Labor Relations Committee. Each application shall be reviewed on the basis of the standards set forth in Paragraph 6 above with consideration of ability, efficiency, experience, regular availability and other relevant factors.

* * *

Paragraph 9 provides for the deregistration of limited registration (Class B) longshoremen.

"(a) A Class B longshoreman may be de-registered in accordance with the provisions of Section 16(f) of the Basic Longshore Agreement and, in addition, he may be de-registered for cause by the Joint Labor Relations Committee (in accordance with such rules or uniform procedures as may be established or followed by such Committee) if the Committee finds:

"(i) That he has made any significant misstatement or misrepresentation in his application or interview.

"(ii) That he has failed, without leave of absence or adequate reason or excuse, to register at the Dispatch Hall for a period of four consecutive weeks, such de-registration to be effective as of the beginning of such four week period.

"(iii) That he has obtained and is engaged in other work or employment on a full time basis except with the approval or upon authorized leave of absence of the Joint Labor Relations Committee.

"(iv) That over a period of three months or more he has had a poor work record as evidenced by frequent failures to sign-in, flops or other facts indicating that he has not made himself available for full time dispatch through the Hall, except where he is on leave of absence for illness, disability or for other reason approved by the Joint Labor Relations Committee.

"(v) That he has failed to make himself available for any work or shifts to which he may have been assigned by the Joint Labor Relations Committee.

"(vi) That he is physically unable to do the work of longshoremen, except where his disability has been incurred by industrial injury or disease occurring during the course of his employment as a longshoreman on the limited registration list.

"(vii) That he fails to develop in respect to the abilities or knowledge requisite to the performance of longshore work and/or if he fails to participate in the longshore training program jointly established by the parties.

"(viii) That he fails to participate where he is involved, in procedures established to provide contract compliance, or that he has violated any other contract provision for which registered longshoremen may be penalized and fails to submit to

discipline or penalty regularly provided in the case of registered longshoremen.

"(ix) That he has been working in a manner which endangers the safety of other longshoremen.

"(x) That he failed to take a physical examination as required by the Joint Port Labor Relations Committee or failed to submit the full report thereof to the Joint Port Labor Relations Committee.

"(xi) Or for any other cause; provided that neither membership or nonmembership in the union nor activity or nonactivity for or against the union, shall be a factor in considering applications for registration or in de-registration.

"(b) Either party, if it shall have information indicating that a Class B longshoreman is subject to de-registration for cause, may, at a regular meeting of the Joint Labor Relations Committee propose the de-registration of such Class B longshoreman and submit to the Committee any evidence in support thereof; if after consideration of the evidence submitted, the parties jointly concur in the proposal to de-register such Class B longshoreman, he shall be de-registered as of the last day on which he worked as a longshoreman; however, notice of such action taken shall be given by ordinary mail to the person so de-registered, and upon proper application in writing, having been made to the Joint Labor Relations Committee by such person within fifteen (15) days after the mailing of such notice, said person so de-registered shall be given a hearing by said Joint Labor Relations Committee at which hearing he may submit evidence as to the facts considered by the Committee and others relevant to de-registration; in the event that the Joint Labor Relations Committee, after such hearing shall be satisfied that the person de-registered has shown that he was de-registered contrary to the rules, because of material mistake of facts or otherwise, and there was no ground for his de-registration, it may by unanimous vote rescind such de-registration; otherwise said de-

registration shall be effective as of the date on which such de-registered person last worked as a longshoreman. Such notice of de-registration shall be by letter. . . ."

In the early part of 1963, the Joint Port Labor Relations Committee announced that the list of Class A registered longshoremen was to be expanded. Under the provisions in the memorandum covering the registration of longshoremen, both the employer and the union must agree on the longshoremen to be registered. To this end, both the union investigation committee and the Joint Port Labor Relations Committee reviewed the records of all Class B limited registration longshoremen who had applied for Class A registration. This meant that the records would be reviewed in respect to the payment of the pro rata share cost of operating the hiring hall, low-man-out violations, availability and prior violations.

The claimants herein had become limited registration Class B longshoremen in 1959 and thereafter continued working in the maritime industry in that capacity until their deregistration on June 17, 1963.

During this period, the claimants were dispatched from the jointly operated hiring hall and paid their pro rata share of the costs thereof. The examination of the records of the claimants showed that on those occasions when they had been late in paying their pro rata share they paid the prescribed fine or penalty of $1 for each day of tardiness. In all cases, the claimants were current in their payments when they were under consideration for reclassification to fully registered longshoremen.

During the period from 1959 to June 17, 1963, some of the claimants had been penalized in one form or another because of a lack of availability or a failure to perform duties assigned. In each instance, the procedures were

followed to bring the matter before the proper committee and, in each instance, penalties were assessed and served by the limited registration longshoremen involved.

Almost all the men herein became involved at one time or another in violations of the low-man-out (LMO) procedure, whereby a careful accounting is kept of hours worked in order that there may be a proper distribution and equalization of work. The rules governing LMO are long, complicated and detailed and cover all contingencies which might arise in connection with the dispatch to work and the maintenance of a record of hours worked.

These rules are set forth in memorandum form entitled:

"SAN FRANCISCO PORT LABOR RELATIONS COMMITTEE RULES AND REGULATIONS GOVERNING LOW-MAN-OUT SYSTEM OF DISPATCH FOR INDIVIDUAL LONGSHOREMEN"

These rules provide generally that Class A longshoremen have a preference over Class B longshoremen in respect to work. In order to be dispatched, a longshoreman must register and be available for work. Lonshoremen who fail to report to the dispatcher after their number is called are obliged to add six hours to their signing in time. This is comparable to working six hours and adds this number of hours to the longshoreman's total hours in determining when he will be dispatched again. Longshoremen with less than the average number of hours of work who do not make themselves available for work or who miss a job opportunity or "flop" must take the average number of hours in their category when they again sign in. A longshoreman may indicate his unavailability for work without penalty on one day a week by "squaring off." This is done by drawing a square around his name or number on the registration list. Work is assigned by the dispatcher to the longshoreman having the least number of hours of work.

Article 17 of the memorandum provides as follows:

> "'Checks' will be made each week and violators will receive the following penalties:
>
> First offense—30 days off;
> Second offense—six months off;
> Third offense—cancellation of registration."

The memorandum of rules then closes with the statement that such rules are the only official rules on the low-man-out system and that "there are no other rules."

After filing applications for reclassification to Class A registered longshoremen, the claimants herein were the recipients on or about June 17, 1963 of a notice that they were deregistered for cause as Class B longshoremen.

At a meeting of the Longshore Labor Relations Committee on July 16, 1963, the Minutes show the following action in respect to Class B longshoremen:

> "The Union submitted the following motions relative to the registration and de-registration of Class "B" longshoremen.
>
> 1. That all B men who are on appeal and who have not been promoted solely because of Low-Man-Out violations shall be given 30 days off as per contract and promoted to A registration.
>
> 2. That the Labor Relations Committee be instructed that all B men who are on appeal and have not been promoted solely because of pro-rata violations shall be re-registered and moved to A registration.
>
> "Employers took the Union's motions under advisement.
>
> "Meeting recessed at 12:00 Noon.
>
> "Meeting reconvened at 10:30 a.m., July 19, 1963 in Room 202, 16 California Street.

"Present:

For Employers	For ILWU, Local 10
L. R. Hartgrave	J. Kearney
J. Trupp	R. Harp
J. Edwards	J. Perez

"Also present for the Employers: R. Ernst.

"Also present for the Union:

W. Chester
R. Rohatch
C. Hoffman
T. Silas

"This meeting was reconvened for the purpose of considering the two Union motions regarding Class "B" longshoremen.

"Employers stated they are in disagreement with the Union's motions on the basis that the Employers are not agreeable to changing the procedures and rules governing registration and deregistration previously agreed to by the parties. These procedures and rules are in accordance with the contract. The action taken by the Joint Committee with respect to the persons referred to in the Union's motion were in accordance with these jointly approved rules. The detailed rules were worked out by the parties and specifically agreed to. The parties long ago agreed as to what would be good cause for deregistration. They agreed, furthermore, that if there was such good cause as to any one of the applicants for Class B registration, each of these would be deregistered. They further agreed that where there was not good cause for deregistration and the man met the other JLRC requirements, then he would be advanced to "Class A" full registration. When rules are agreed upon the LRC needs to enforce them uniformly or we will end up with no one living up to our LRC rules. These rules were adopted to provide a uniform basis under which the committee would act. If we change the rules in the middle of the process, we will have no basis for operating fairly and equally to all concerned. Furthermore, to start changing the

rules at this stage would delay the registration procedures.

"Employers stated they would note NO on both Union motions.

The notice of June 17, 1963 also stated that such deregistration was based upon the determination of the Joint Port Labor Relations Committee that the claimants had violated the applicable rules and that it was for this reason that they were being deregistered. The notice also provided for an appeal to be filed within 15 days. The claimants herein all filed appeals and were given the opportunity of a hearing before the Joint Port Labor Relations Committee meeting at Pier 24 on the San Francisco Waterfront on or about July 23, 1963. At this proceeding they were informed of the grounds of their deregistration and given an opportunity to set forth their disagreement therewith. In matters involving low-man-out and pro rata late payments, the claimants were referred to the record-keeping facilities of the jointly operated hiring hall and the treasurer's office of the union. A day certain was set for them to make such a personal investigation and, for the most part, the claimants herein reviewed such records. Although this review revealed some discrepancies, nevertheless in each case there continued to be indications that there were errors in reporting under the LMO system and that there were times when the pro rata payment was late. When the claimants learned that they had not prevailed in their appeal, they indicated that they wished to proceed further in the appeal process and such matters are currently pending.

The claimants maintained that they had been limited registration longshoremen since 1959 and that they had complied with all the rules and regulations governing their employment. Although conceding that there were times when pro rata payments were late or that there were violations, they maintained that in each instance the authorized

penalty or assessment was made and satisfied. In complying with the rules, they were not aware that there was any carry-over in respect to deficiencies; and, by the deregistration action of the Joint Port Labor Relations Committee, the claimants maintained they were subjected to what was comparable to "double jeopardy" in that they were being penalized a second time for deficiencies for which they had already been penalized.

The employer in turn contended that when the claimants herein did not abide by the operating rules they were acting adversely to the interests of the employer, the Union and the Joint Port Labor Relations Committee. In respect to the low-man-out procedure, they were considered to be "chiseling" and thereby obtaining work to which they were not entitled at the expense of their fellow longshoremen.

Claimant Johnson (ID-82) appeared and testified, but the evidence elicited was not pertinent to the issues. While this might be attributed to the claimant's attitude toward the hearing, nevertheless there appeared to be a degree of confusion which affected the claimant's presentation. Basically, the underlying factors which were developed in the other cases were also present in the claimant's case, even though the claimant did not bring this out in his testimony.

REASONS FOR DECISION

A careful consideration of the facts shows that the claimants herein were employed in the maritime industry as Class B or limited term longshoremen. As such, these claimants were not union members but were merely permitted to use the hiring hall for dispatch purposes for which they paid a fee calculated on the pro rata cost of operation of such hall.

Their association with the industry came to an end when they were "de-registered" by the Joint Port Labor Relations Committee, composed in equal parts by representation from the International Longshore and Warehouseman's Union, Local 10, and the Pacific Maritime Association.

The determination and ruling of the department and the primary facts show that the issue involved herein comes within the scope of section 1256 of the Unemployment Insurance Code. This section provides that an individual is disqualified for benefits if he has been discharged for misconduct connected with his most recent work or if he left the most recent work voluntarily without good cause.

The questions presented are two in number and are mutually exclusive. First, if the claimants herein voluntarily left their work, did they do so without good cause? Secondly, if the within claimants were discharged by their employer, was such discharge for misconduct?

In determining whether there has been a voluntary leaving of work or a discharge under section 1256 of the code, the California Unemployment Insurance Appeals Board reasoned in Benefit Decision No. 6590 that a discharge takes place where the employer is the moving party in terminating the employment and that a voluntary leaving of work occurs where the employee is the initiating party in bringing the employment relationship to an end.

In Appeals Board Benefit Decision No. 5869, the claimant was working as a service station attendant under the direct supervision of a manager who did not have authority to discharge him, as that authority was retained by the district supervisor. The claimant committed an error in respect to the performance of his duties and was notified by the station manager that he would not be permitted to work pending the supervisor's return from vacation. The manager recommended to the claimant that he resign, which

the claimant did. It was shown that the district supervisor would not have reinstated the claimant or transferred him to another station. It was held therein by the Unemployment Insurance Appeals Board that the claimant could not be held to have left his work voluntarily in a situation where the employer had the choice of retaining his services or discharging him. It was unquestioned in the cited case that the claimant was willing to continue performing services for the employer but that the employer would not permit the claimant to perform his duties. It was held therein that the issue was one of a misconduct discharge and, under the facts of the case, it was further held that the claimant had not been discharged for misconduct within the meaning of the law (Appeals Board Benefit Decisions Nos. 6469 and 6746).

The case referred to hereinabove is applicable in principle to the instant matter in that the choice of retaining the services of the claimants herein was residual in the Joint Port Labor Relations Committee. It was within their discretion to continue the claimants as registered longshoremen or to abruptly bring this relationship to an end by deregistration. However, there are further considerations which must be treated before it can be said that the claimants herein were discharged or, on the other hand, whether they had voluntarily set in motion a series of events which brought about their unemployment and thus could be held to have constructively voluntarily left their work.

In Appeals Board Benefit Decision No. 6719 the claimant was a union committeeman in the plant in which he worked and in that capacity initiated a grievance for a fellow employee which was very strongly worded. As a result of this written grievance, the claimant was suspended. It was held in that case that, although a disciplinary suspension is usually deemed to be a voluntarly leaving of work, yet the

claimant in the cited case did not wilfully violate the shop rule which precluded publishing of malicious or vicious statements concerning any employee, supervisor, or the company. The Appeals Board utilized the following language in reaching their conclusion:

> "We do not believe that every disciplinary suspension resulting from violation of an employer rule must result in a finding that the claimant left work voluntarily and without good cause. It must be shown by a preponderance of the evidence that the claimant embarked on a course of action which he knew was in violation of such rule and which he knew could result in the employer taking disciplinary action."

It was accordingly held that the claimant was involuntarily unemployed and not subject to disqualification under section 1256.

In *Sherman/Bertram, Inc.* v. *California Department of Employment, et al.*, 202 CA(2) 733, 21 Cal Rep. 130, the issue was whether an employee unable to return to his work because he had been incarcerated for the commission of a felony, voluntarily quit his job without good cause. Reference was made therein to section 100 of the Unemployment Insurance Code which provides in part "for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed through no fault of their own . . . ." It was pointed out in the decision that the afore-mentioned section of the code establishes that *fault* is a basic element to be considered in interpreting and applying the code sections on unemployment compensation. In deciding that the claimant by his action had voluntarily quit his most recent work without good cause and had not been discharged, reference was made to Appeals Board Benefit Decision No. 5309, wherein it was stated:

> "While it would appear that the claimant herein may not have actually intended to bring about his unemployment, he did nevertheless voluntarily embark upon a course of conduct, the very nature of which he knew, or must be conclusively presumed to have known, would jeopardize his return to work within the allotted time."

In the *Sherman/Bertram* case, it was held that the claimant's loss of employment was the result of an act of volition on his part and tantamount to a voluntary leaving without good cause.

It is worthy of note that the cited cases emphasize the necessity of "fault" being present and that the claimant in each instance knew or should have known that his actions would jeopardize his employment.

In order to evaluate the circumstances in the instant case with the cited cases, it is necessary to review briefly the circumstances in which the claimants are found. They had worked since 1959 as longshoremen and, as such, were subject to the rules and regulations that have been hereinabove set forth. In this capacity they were obliged to pay a pro rata cost of the hiring hall, which they all did, even though at times they were late with such payments. It is worthy of comment, however, that as of the date that consideration was given to them for reclassification as Class A longshoremen, they were all in a current condition in respect to their pro rata payments. In each such instance the individuals had paid the $1 per day fine, which was established for tardy payments and in each such instance, the man continued fully eligible to be dispatched to work as a Class B longshoreman and was in fact dispatched as such over the years involved.

Similarly, some of the claimants herein had been subjected to penalties in connection with violations of the "low-man-out" rule. It is true that errors had occurred in re-

spect to the hours used by some of the claimants herein. Such errors had occurred in some cases because of a rule adopted by the dispatcher in connection with Sundays and, in other cases, it was because of lack of knowledge and understanding of the rules and confusion in the minds of the claimants as to the proper hours to be used. In each such instance the claimants had been continued in employment until the decisive action of the Joint Port Labor Relations Committee which is the subject matter of the instant case.

Some of the claimants had also been involved in a lack of availability and in each instance served the penalty that had been imposed in this connection. Other violations of rules and regulations had been handled in each instance at the time of commission and the claimants had been continued in their Class B classification.

These are all circumstances which differ materially from the cases cited which have to do with the consideration of activities which would constitute a constructive voluntary leaving of work. It is to be noted that a substantial number of the cited cases deal with incarceration and the wilful act of the individual claimant in bringing about the circumstances which resulted in his confinement and consequent inability to return to employment. In the instant case, the acts of the claimants over the years did not involve incarceration although at times a period of suspension was imposed in respect to some of the violations. In every instance, however, the claimants had "cleared the record" at the time that they made their application for the advancement in classification.

After analyzing all the facts it is inherently impossible to believe that the claimants herein could logically have been expected to anticipate that their acts would result in the loss of their employment. In brief, the claimants did not embark on a course of action which they knew or should

have known would result in the loss of their employment. At a matter of fact, over the years a pattern of behavior was established which was condoned and allowed by the employer, the union and the Joint Port Labor Relations Committee. This pattern was such that violations were handled according to the rules and provisions of the contract and memorandums and each man continued as a limited registration longshoreman.

The choice of retaining the claimants' services or discharging them was retained by the Joint Port Labor Relations Committee and, therefore, the act of terminating the employment relationship originated with the committee and the claimants must, therefore, be held to have been discharged.

The question then remaining is whether or not such discharge was for misconduct within the scope and meaning of section 1256 of the Unemployment Insurance Code.

In Appeals Board Benefit Decision No. 6050, it was held that to establish misconduct the evidence must show that the claimant was discharged because of a material breach of duty owed the employer under the contract of employment which breach tends to injure substantially the employer's interest.

A careful analysis of the facts shows that during the period of the claimants' employment from 1959 to June 17, 1963, they were retained as registered Class B longshoremen and as such were dispatched to such employment as became available through the hiring facilities of the jointly operated hiring hall. During this period of employment, as has been indicated hereinabove, all the claimants became involved to a more or less extent with one or more of the stated violations of the rules adopted for their conduct. Again, emphasis must be placed upon the fact that violations in respect to the working rules or in respect to avail-

ability were considered at the time of occurrence and penalties were assessed. Those penalties being satisfied, the individuals were continued as Class B longshoremen and were dispatched to employment as it arose. If the Joint Port Labor Relations Committee was harmed in any way or if the companies for whom the services were performed through the facilities of the Joint Port Labor Relations Committee were jeopardized, such acts against the employer's interest were condoned and abrogated by the imposition of the penalty and the satisfaction thereof.

In connection with the violations of the pro rata payment and the "low-man-out" rule, it is especially noteworthy that the principal party to be aggrieved by such violations was the International Longshore and Warehousemen's Union, inasmuch as such violations affected the financial operation of the hiring hall and also was of a nature whereby the so-called "chiseling" of the claimants was to the detriment of the members of the union. Yet, despite these acts which would jeopardize the union organization rather than the employer organization or the Joint Port Labor Relations Committee, the ILWU at the meeting of the Joint Port Labor Relations Committee, on July 16, 1963, moved that individuals involved in LMO violations and pro rata payment violations be reregistered and moved to Class A registration. This would indicate that the principal party which would be aggrieved by the acts of the claimants was not in fact aggrieved and that the grievance was not of a nature which would preclude the union desiring such individuals to be promoted to the higher classification and accepted into membership.

When these circumstances are consirered along with the fact that violations of the LMO program would in no way jeopardize the functions of the Joint Port Labor Relations Committee and that said Joint Port Labor Relations Com-

mittee had previously condoned the other violations that are involved herein, it is concluded that there is serious doubt that the acts of the claimants constitute misconduct within the meaning of sections 1256 and 1030 of the Unemployment Insurance Code. A careful review of the minutes of the meeting of July 16, 1963 shows that the lack of unanimity on the part of the Joint Port Labor Relations Committee in respect to reregistering the claimants and others involved in the deregistration proceedings was based upon the principle that there should be a uniform basis under which the committee would act. "If we change the rules in the middle of the process, we will have no basis for operating fairly and equally to all concerned."

These circumstances and the reasons advanced for not reregistering the claimants serve to establish that the claimants herein failed to meet the standards, or the requirements, established by the Joint Port Labor Relations Committee. In this respect, the conclusion of the Unemployment Insurance Appeals Board, in Benefit Decision No. 6223, is applicable. Therein it was held that inability to satisfy an employer's standards as to the quality or quantity of work does not constitute misconduct so long as there is no wilful or intentional disregard of the employer's interests. The circumstances herein are such, and the evidence serves to establish, that the claimants desired to continue working and that they had no reason to believe that violations occurring over a period of three or four years, for which proper penalty had in each instance been made, would result in the loss of their employment. Their acts were not of a nature to be wilful or indicative of intentional disregard of the interests of the Joint Port Labor Relations Committee. The action of the committee in deregistering the claimants is clearly indicative of the failure of the claimants to meet the standards desired by the committee. A discharge under such circumstances is not for misconduct

within the scope and meaning of sections 1256 and 1030 of the Unemployment Insurance Code.

The testimony of claimant Johnson (ID-82) shows a degree of confusion in respect to the issues involved. The circumstances surrounding the deregistration of claimant Johnson differed in no major way from the circumstances in which the other claimants were involved. Even though claimant Johnson as an appellant did not establish a prima facie case by his own testimony, the facts developed in the remainder of the hearing as they pertain to the issues herein are applicable to his situation and accordingly it is also held that his discharge was not for misconduct within the meaning of sections 1256 and 1030 of the code.

DECISION

The determinations and rulings of the department are affirmed, reversed or modified to hold all the claimants herein not subject to disqualification under section 1256 of the code and the employer's reserve account subject to charges under sections 1030 and 1032 of the code.

Dated: May 14, 1964

DONALD GILSON, Referee

THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITHIN TEN DAYS. FOR APPEAL RIGHTS SEE ATTACHED NOTICE.

No. 80 499

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

NOV 25
MICHAEL RODAK, JR.

GEORGE R. WILLIAMS, et al.,
Petitioners,

VS.

PACIFIC MARITIME ASSOCIATION, a non-profit corporation, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an unincorporated association, and I.L.W.U. LOCAL No. 10,
Respondents.

APPENDIX TO RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

GEORGE R. WILLIAMS, et al.,
Petitioners,

VS.

PACIFIC MARITIME ASSOCIATION, a non-profit corporation, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an unincorporated association, and I.L.W.U. LOCAL No. 10,
Respondents.

APPENDIX TO RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Appendix

Original Filed Aug 27 1976
William L. Whittaker
Clerk, U. S. Dist. Court
San Francisco

In The United States District Court
For The Northern District of California

Civil No. 42284 GBH

GEORGE B. WILLIAMS, et al.,

Plaintiffs,

v.

PACIFIC MARITIME ASSOCIATION, et al.,

Defendants.

Findings of Facts and Conclusions of Law

INTRODUCTION

Few cases which survive the jousts and skirmishes of pre-trial and proceed to the rigor of trial can be disposed of in a summary manner, and the instant case is certainly no exception. The voluminous briefs and files in this matter represent the culmination of years of preparation and weeks of difficult trial.

All counsel are warmly congratulated by the court for their patience, dedication and thoroughness. No party could have finer representation than was afforded the participants in these proceedings.

This cause came on regularly for trial before the Court sitting without a jury, on January 14, 1974, and continued with the taking of live testimony until July 3, 1974.

The plaintiffs were represented by Arthur Brunwasser, Esq., and Fred Kurlander, Esq. Defendant Pacific Maritime Association (hereinafter "PMA") was represented by Richard Ernst, Esq., Dennis Daniels, Esq., and Kendall DeBevoise, Esq., of the firm of Ernst & Daniels. Defendants International Longshoremen's & Warehousemen's Union and ILWU Local No. 10 (hereinafter sometimes "Union defendants") were represented by Richard Gladstein, Esq. and Norman Leonard, Esq., of the Firm of Gladstein, Leonard, Patsey & Andersen.

The trial was bifurcated, and this first stage was concerned with the issue of liability only. Oral and documentary evidence was introduced by and on behalf of each of the parties. Thereafter, counsel for all parties prepared a written Stipulation as to Testimony which was filed on February 28, 1975. Subsequently, further documentary material was incorporated into the record.

After all parties had rested, the parties filed their post-trial briefs and proposed Findings of Fact and Conclusions of Law, and the cause was then submitted to the Court for decision.

The Court has considered all the evidence and testimony adduced at the trial and in the Stipulation and has studied the briefs of counsel. Being fully advised in the premises, and on the basis of all the evidence not subject to legal objection, this Court now makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

The parties.

1. Plaintiffs are former limited registration Class B longshoremen who commenced their employment in June and August 1959 in the Port of San Francisco. They were discharged or "deregistered" from this employment on June 17, 1963.

2. Defendant Pacific Maritime Association is a non-profit California corporation composed of all or substantially all of the major stevedoring employers on the Pacific Coast and in the Port of San Francisco. It is an "employer" within the meaning of § 2(2) of the National Labor Relations Act, 29 U.S.C. § 152(2).

3. Defendant International Longshoremen's and Warehousemen's Union (the "ILWU") is the certified collective bargaining representative for all longshoremen employed by the members of PMA and is recognized as such under § 2(5) of the Act, 29 U.S.C. § 152(5).

4. The plaintiffs were among the longshoremen comprising the unit represented by the ILWU as the certified collective bargaining representative.

5. Defendant ILWU Local No. 10 ("Local 10") is the chartered local affiliate of defendant ILWU for longshoremen working in the Port of San Francisco.

Collective bargaining through 1948.

6. Since 1934, there has been in continuous existence a collective bargaining relationship between the PMA ("PMA is used herein to refer to the Pacific Maritime Association and its predecessors, including the Waterfront Employers Association of San Francisco and the Waterfront Employers Association of the Pacific Coast and the Shipowners Association of the Pacific Coast) and the ILWU ("ILWU" is used herein to refer to the ILWU and its predecessor from 1934 to 1938, International Longshoremen's Association, District 38).

7. In 1934, there was a bitter longshore strike on the West Coast. It was finally concluded on the basis of an award entered by the National Longshoremen's Board. This was a board appointed by President Roosevelt. Its chairman was Archbishop Hanna. The other members were O. K. Cushing, Esq., and Edward F. McGrady, Assistant Secretary of Labor.

8. A principal demand of the longshoremen striking in 1934 was that there be a limitation on indiscriminate entry into the longshore work force, with a limited group of longshoremen to have preference in the assignment of work and to be assigned to jobs through a hiring hall to be operated by the longshoremen.

9. The Archbishop Hanna award established the system of registering longshoremen, so that the longshoremen with significant seniority were placed on a list of registered longshoremen and were given first preference for all of the work available to longshoremen in the port. This award also called for the use of a dispatching hall for the dispatching of longshoremen to work. It provided that the hall would be under the joint control of the employers and the union, but that the dispatchers themselves would be elected by the union.

10. The Archbishop Hanna award provided for a system of labor relations committees. These committees were given the administrative function of operating the dispatching halls. In addition, they were given the duty of investigating and resolving grievances that either the union or the employer might bring against the other party.

11. The fundamentals of the registration system, which were established in 1934, have been embellished and refined since that date.

12. By 1938, there were three groups of longshoremen. The group with the highest seniority were those that had full registration under the existing contract; they had first call on all the work. A second group of employes had second preference for the work and had a seniority status in the industry giving them some continuity of employment. The third group embraced the workers who came and went as peaks on longshore work required the use of extra men.

13. For the fifteen years from 1934 through 1948, the nature of the PMA-ILWU collective bargaining was one of continuous guerrilla warfare.

14. In 1948, a particularly bitter and extended strike occurred in the longshore industry on the West Coast.

Collective bargaining after 1948.

15. After 1948, the nature of the ILWU-PMA collective bargaining was sharply different. The theme of the collective bargaining between the ILWU and the PMA between 1948 and 1963 was that there should be joint efforts to find a way to preserve and develop the West Coast stevedoring industry so that (a) increasingly improved wage scales for the work performed and continuity of employment could be provided to the registered longshore work force, and (b) the employers could achieve a stable industry enabling them to operate their businesses on a continuing basis in a manner efficient enough so as to provide a fair return on their investment while generating the cash flow necessary for such a wage scale.

16. One of the enlightened, forward-looking steps that the parties achieved after the 1948 strike was the milestone agreement for mechanization and modernization of the West Coast waterfront industry (the "ILWU-PMA M & M Agreement"). By this contract amendment, the ILWU agreed to the introduction of labor-saving devices and the elimination of certain restrictive work practices and it agreed to the basic demand of the employers that the longshore work force should be upgraded. The M & M Agreement made significant achievements toward this goal. By it, the employers agreed to make payments of $29 million to mitigate the impact on employes of technological unemployment, and agreed to assign longshoremen to all the new equipment and to give them the necessary training to hold jobs in a much more "capital intensive" mode of operations. It was hoped that this would end a long and troubled history of labor discord on the West Coast waterfront.

17. The ILWU-PMA collective bargaining contract in effect during all the periods material hereto included, *inter alia,* a basic contract document entitled "Pacific Coast Longshore Agreement" (hereinafter "PCLA"), local working rules, local dispatching rules, a Memorandum with respect to Registration and Deregistration adopted in 1958, minutes of the San Francisco Joint Port Labor Relations Committee (hereinafter "JPLRC") and rules, determinations and procedures adopted by the JPLRC, minutes of the Northern California Joint Area Labor Relations Committee (hereinafter "Joint Area LRC") and rules, determinations and procedures adopted by the Joint AREA LRC, minutes of the Joint Coast Labor Relations Committee (hereinafter "Joint CLRC") and rules, determinations and procedures adopted by the Joint CLRC, decisions of area and coast arbitrators, determinations of the parties, and the industrial common law of the shop developed under this particular contract during the period since 1934.

18. The ILWU-PMA collective bargaining contract makes provisions for a Joint Port Labor Relations Committee for each port. one of these being the JPLRC, a Joint Area Labor Relations Committee for each of the four areas of Washington, Oregon, Northern California and Southern California, respectively, one of these being the Joint Area LRC, and the Joint Coast Labor Relations Committee (the Joint CLRC).

19. These labor relations committees have duties in the maintenance and operation of the dispatching hall, in the control of the registered lists of the men in the port, in administering the contract, in investigating and adjudicating all grievances and disputes, including complaints against longshoremen and other disputes involving the ILWU-PMA contract. Generally, the JPLRC has the authority to maintain and operate the San Francisco dispatching hall and to exercise control of the registered list in San Francisco and to investigate and adjudicate all grievances and disputes arising with respect to operations in San Francisco. The

JPLRC had a special B-list panel that handled issues as to the registration status of limited registration Class B men for the period relevant hereto, including the time when the applications submitted in 1958 were being reviewed to select those applicants who should be granted Class B limited registration status and the time when the B-list panel members participated in the conferences with plaintiffs and other limited registration longshoremen in July of 1963. The Joint AREA LRC has an intermediate appellate authority with respect to certain disputes. The Joint CLRC has ultimate control over the registered lists, has appellate authority with respect to decisions in the lower labor relations committees, and has additional authority with respect to the carrying on of collective bargaining during the period of the contract's term.

20. Beginning on or about January 1, 1952, the San Francisco dispatching hall was operated through the "low-man-out" system of equalizing work opportunities. Under this LMO system, each man kept a record of the hours that he worked and the other hours chargeable to him under the procedures governing this system, the resulting figure being the individual's "accumulated LMO hours". Every three months, a new work equalization period began at which time each of the registered men started out afresh from a zero accumulated LMO hours figure. During the work equalization period, the men were dispatched on a "low-man-out" system, under which the man whose work number was correctly entered on the master dispatch sheets used in the dispatching hall at the lowest accumulated LMO hours figure was entitled to the first dispatch to a job. The integrity of the system depended upon the honesty and accuracy of the individual's records kept by each longshoreman and upon his using the correct accumulated LMO hours figure in his use of the dispatching hall. This system was described at the trial as an "honor system".

21. It was possible for an individual registered longshoreman to get an advantage over his fellows by being dispatched at an

accumulated LMO hours figure that was below his true LMO hours figure. To take a job under these circumstances was to "drop LMO hours". Local 10 employed record checkers who from time to time reviewed the records as to the dispatch of longshoremen to determine whether or not any Class A full registration longshoremen had dropped an excessive number of LMO hours.

The status of the limited registration Class B longshoremen.

22. In the 1950's, agreed procedures were developed through bargaining between the ILWU and the PMA to establish a formal limited registration Class B category of longshoremen. These men were to have a probationary or second-class status. They were to have the second preference in the amount of available work. It was agreed that the limited registration Class B longshoremen would be selected by formal procedures, including review of detailed information as to their past history and the use of physical examinations. These men would hold limited registration Class B status subject to stricter rules and more stringent penalties than were applicable to the full registration Class A longshoremen under the contract and common law of the shop that had developed over the years since 1934, which would continue in effect but be applicable only to the longshoremen with a seniority status established through years of service, the fully registered Class A longshoremen.

23. In keeping with the nature of the status of the limited registration Class B longshoreman, the contract provided that he could be deregistered for any cause, except only if such action would constitute a violation of § 13 of the PCLA, the contract's provision prohibiting arbitrary action, to wit: discrimination "in connection with any action subject to the terms of the Agreement either in favor of or against any person because of membership or nonmembership in the Union, activity for or against the Union or absence thereof, or race, creed, color, national origin or religious or political beliefs".

24. The grievance-arbitration procedure for § 13 grievances was set out in § 17.4 of the PCLA. This procedure gave the individual member of the bargaining unit the right to process a claim that § 13 had been violated. He was given full control of his grievance. He could carry it to the Joint CLRC and on to the Coast Arbitrator if he wished to do so. He could use his own counsel in the proceedings before the Coast Arbitrator. The union could not prevent him from processing his grievance, but he and his union could agree to proceed together on his grievance claim.

25. The parties agreed that there would be a review of the full record of each Class B limited registration longshoreman at the time he could apply for promotion and that he could be deregistered if the JPLRC found cause therefor upon consideration of his work history and all phases of his qualifications to do all of the work of longshoremen, including consideration of ability, efficiency, experience, regular availability and other relevant factors.

26. In 1958, the parties agreed that a group of limited registration Class B longshoremen should be added to the longshore work force in San Francisco. To this end, an application form was developed and notices issued that men could apply for Class B limited registration status in the port of San Francisco. Some 9,000 applications were filed. Plaintiffs were among those who filed applications at this time. The group of limited registration Class B men of which plaintiffs were a part included all of the limited registration Class B longshoremen holding such registration status from 1959 until after August 1, 1963.

27. The application for Class B limited registration, which each plaintiff and all the other applicants for Class B limited registration status signed and filed in 1958, notified the applicant that the job for which he was applying would not have the same security as that of a Class A fully registered longshoreman, but

would be subject to the rules and determinations of the joint labor relations committees and the parties. The plaintiffs testified that they paid little attention to this information.

28. At the time that each of the limited registration longshoremen who were registered in 1959 was advised that he should come to the JPLRC to arrange for his physical examination if he chose to have his application considered further—and on the letter so advising the applicant—he was notified that he was required to make a pro-rata share payment to the union each month to cover his share of the costs of the dispatching hall, the labor relations committee, etc., and that he could be deregistered for failing to pay the established pro-rata amount or for failing to live up to any JPLRC rules or determinations. Although the plaintiffs were so notified at this time, they testified that they paid little attention to this information.

29. There were JPLRC rules and determinations that a limited registration Class B man was not to drop LMO hours in using the honor system for assigning work to longshoremen on an equal share basis, that a limited registration Class B longshoreman was not to participate in work disruptions (and especially not in any in which the drinking of alcohol was a significant factor), that a limited registration Class B longshoreman was to pay his pro-rata on time each month, and that the limited registration Class B longshoreman was to maintain 70% availability. The plaintiffs admitted that they did not pay attention to the fact that these rules were rules and determinations of the JPLRC.

30. At about the time he first began to do longshore work as a limited registration Class B longshoreman, each of the plaintiffs was given written notice that his record as a longshoreman would be reviewed at the time he would be considered for promotion and that misconduct for such things as dropping LMO hours, failing to maintain availability, or being involved in work

disruptions would count against him at that time. The plaintiffs stated that they paid little attention to this information.

31. In July 1959, each of the plaintiffs was sent a copy of the provisions of the Memorandum on Registration and Deregistration, stating that he could be deregistered for any cause other than by an action that would be prohibited by § 13 of the contract. The plaintiffs stated that they paid little attention to this document.

32. From the day that each Class B man gained limited registration, he was repeatedly and clearly informed that he was in a second-class category, that he had to keep his "nose clean", that he should live up to all the rules, that he could be deregistered for failing to live up to the rules, and that the union and the employer were keeping records with respect to his misconduct to which they would give consideration when the time came for him to be reviewed for promotion.

33. The limited registration Class B longshoremen were informed early in 1960 that the union was in agreement with the employer that a man who gave cause for deregistration would be deregistered rather than promoted to full registration Class A seniority status when his record was reviewed for promotion consideration.

34. Each limited registration Class B longshoreman was duly and repeatedly informed that—if he was to be assured of promotion to the coveted seniority status of a Class A fully registered longshoreman—it was necessary that he maintain an absolutely clean record as to "misconduct" contrary to any rule or determination of the JPLRC applicable to limited registration Class B longshoremen.

35. As a result of the information given to the plaintiffs, in written and oral forms, each of the plaintiffs was and is chargeable with knowledge that misconduct of all of the types considered by the JPLRC in determining who would be promoted and

who would be deregistered in the spring of 1963 was misconduct for which the limited registration Class B longshoremen could be deregistered.

36. In 1960, Local 10 reviewed the records of over 300 limited registration Class B longshoremen before finding 163 of them whom it would agree were eligible under the contract for promotion. In doing so, it reviewed each individual's record as to the time of paying his pro-rata and as to how many LMO hours he had dropped.

The 1960-1962 period.

37. During the period that plaintiffs were limited registration longshoremen, beginning with June or August, 1959, and continuing until June of 1963, the JPLRC from time to time accumulated the data as to the availability of the Class B limited registration longshoremen and gave notices of deregistration to all those who appeared to have failed to meet the 70% availability standard.

38. Each of the individual longshoremen involved was advised that he could file a grievance with respect to the notices of deregistration for poor availability, and 339 of the limited registration Class B longshoremen (including 29 of the plaintiffs participating in this proceedings) did so during the period of these reviews.

39. Through the handling of grievances in response to notices of deregistration for poor availability and the handling of other grievances with respect to on-the-job complaints, the JPLRC developed a due, fair and reasonable adjudicative technique that was appropriate for finding out actual facts with respect to the complaints regarding the longshoremen and for applying the contract's terms to the facts so found. This procedure was not an adversary procedure, such as is used in the Anglo-American court system, but it was an investigative technique in which the collective bargaining parties and the individuals involved carried on

informal procedures to find facts as to a longshoreman's conduct relevant to the issues under the contract. This procedure was fair, due and appropriate under the circumstances and in view of the history in this industry and the general practices of collective bargaining in American industry.

40. As a result of the use of this collective bargaining adjudicative technique, many of the limited registration Class B longshoremen, including 29 plaintiffs, who were given notice of deregistration for poor availability were restored after hearings to registration status, but others were deregistered. In some cases the deregistration was sustained, although the individual longshoreman had not previously been brought before the JPLRC on a poor-availability deregistration issue. In many cases, men were given a second opportunity to maintain 70% availability where an acceptable reason for poor availability was shown at the hearing before the JPLRC. In some cases, individuals were given a third or even a fourth chance to return to registered status after having had a record of poor availability where a good and sufficient reason for such an unusual work history was provided. An industrial injury could provide such an excuse.

41. During the period in 1960 when Local 10 was making studies as to whom it might agree were eligible under the contract for promotion to fully registered Class A status, the Joint CLRC exercised its ultimate control of the registered lists in the ports in California, Oregon and Washington by freezing registration and freezing promotion from limited registration Class B status to the coveted seniority status of Class A full registration. The purpose of this freeze was to avoid making changes in the work force that might have to be reversed later because the need for men in the longshore work force had changed as a consequence of the Mechanization and Modernization programs being put into effect. This was a rational and reasonable exercise of discretion by the ILWU and the PMA as the parties to the collective bar-

gaining contract in carrying on their good-faith collective bargaining in light of the uncertainties in manpower requirements created by the expectation of changes in operations under the M & M Agreement.

42. Approximately one year after the freeze, a motion was submitted by a group of San Francisco longshoremen asking for the promotion of the limited registration Class B longshoremen who had good records. At this time, plaintiff Stanley Weir made a report to the limited registration Class B longshoremen in San Francisco, in which he praised this resolution. He stated that it was then well known that only the better longshoremen would be promoted and that those who failed to live up to the rules that had been publicized as defining misconduct of longshoremen would not be promoted.

43. Factions developed within Local 10 on the subject of promotion of the limited registration Class B men. One group included Selden Osborne, Asher Harer, Hal Yanow, Frank Stout, James Kearney and others; it favored the granting of union membership to the limited registration Class B men and their dispatch with the fully registered Class A longshoremen, even though this would be in violation of the contract and the law. Another faction included Harry Bridges, William Chester, Robert Rohatch, Tommie Silas and others; it was of the opinion that the union should comply with the contract with the PMA and promote only on the basis of joint action between the ILWU and the PMA.

44. The 1962 coast caucus of the ILWU directed the representatives of the longshoremen to negotiate with the employers to lift the freeze.

45. In the contract negotiations of 1962, the ILWU negotiators reached agreement with the PMA that the subject of the freeze on the promotion of the limtied registration Class B longshoremen to fully registered Class A status—and the freeze on adding new limited registration Class B men—would be referred to the Joint CLRC for further detailed collective bargaining.

The explicit promotion standards.

46. By September 1962, the Joint CLRC had come to an agreement (a) that the parties should move toward lifting the freeze and (b) that the PMA had obtained a commitment—which the ILWU was bound to honor in carrying on collective bargaining with respect to the conditions under which the freeze would be lifted—that there should be an upgrading of the longshore work force as part of the program for selecting limited registration Class B men for promotion.

47. In the fall of 1962, Local 10 gave consideration to the various types of misconduct that ought to be considered in determining who would be promoted and who would not be promoted to fully registered Class A status. The preliminary discussions as to such considerations included the subjects of the time of paying pro-rata, the dropping of LMO hours, and on-the-job complaints.

48. During the period from October to December, 1962, the staff of the San Francisco office of the PMA reviewed the records of all of the limited registration Class B longshoremen with respect to on-the-job complaints and availability, and submitted a report to the union representatives of the facts found by this review.

49. Early in December 1962, the Joint CLRC reached a formal agreement for the lifting of the freeze on promotion of limited registration Class B longshoremen to the coveted senority status of Class A fully registered men, with the provision that the whole subject would remain under the control of the Joint CLRC and that it would have a sub-committee make studies of various facets of the overall registration problem.

50. In December 1962, there was a meeting between San Francisco representatives of the ILWU and the PMA to exchange facts with respect to the employment records of the limited registration Class B longshoremen and to discuss which causes for

deregistration should be pardoned and which should not. At that time, these representatives had data as to late payment of pro-rata and the JPLRC actions with respect to misconduct of the limited registration Class B longshoremen during the period that they had been registered for waterfront work. The representatives also discussed giving consideration to actual availability records and to misconduct in the hall by dropping LMO hours.

51. In December 1962, the union representatives on the Joint CLRC advised the members of Local 10 in San Francisco that the ILWU side of the Joint CLRC would support a program for promoting 400 limited registration Class B longshoremen in San Francisco to the coveted seniority status of the Class A fully registered man.

52. In January 1963, the union representatives on the Joint CLRC proposed that there be a preference in reviewing men for promotion based on their union affiliations or lack thereof, but the PMA refused to accept such a system of discrimination. PMA's protest prevailed, and no such discrimination occurred.

53. In early 1963, Local 10 proceeded to make studies to ascertain facts as to misconduct in the dispatching hall shown by the number of LMO hours dropped by each of the individual limited registration longshoremen.

54. At the end of January 1963, each longshoreman on the Pacific Coast was given written notice with his paycheck of his right to handle a grievance in his own way, subject to his own control, up through the grievance procedure and up to the Coast Arbitrator (under § 17.4 of the PCLA) with respect to any action that was contrary to his interests and that he claimed was tainted by any arbitrary action on the part of the union or the employer as a result of any claimed discrimination in connection with any action subject to the terms of the Agreement either in favor of or against any person because of membership or nonmembership in the Union, activity for or against the Union or the absence thereof, or race, creed, color, national origin or religious or political beliefs.

55. During the period from January 1963 to approximately May 8, 1963, the parties to the ILWU-PMA contract carried on collective bargaining negotiations as to exactly how the provisions of the 1958 Memorandum on Registration and Deregistration and particularly the provision of § 9(xi) thereof under which any limited registration Class B longshoreman could be deregistered if the JPLRC found any cause therefor would be applied. Through hard bargaining on this subject of explicit promotion standards, the ILWU was able to persuade the PMA to broaden the area of the joint pardons for violations of the rules and determinations of the JPLRC, violations of the contract, and other misconduct on the job and in the dispatching hall. As a result thereof, the number of limited registration longshoremen who were not promoted was decreased from approximately 150 to 82.

56. In the hard bargaining between the PMA and the ILWU with respect to the explicit promotion standards, there was good-faith collective bargaining in the ordinary course on the part of each of the two parties. The evidence establishes that neither the ILWU nor Local 10 proceeded in such collective bargaining with any motive of malice, hostility, ill-will, bad faith, animosity or invidious considerations toward any limited registration Class B longshoreman, including any plaintiff, or engaged in any arbitrary, discriminatory or invidious conduct as to any such person.

57. The PMA position that it was entitled to an upgrading of the longshore work force was based, fundamentally, on the provisions of § 17.851 of the PCLA, which reads:

> "17.851 More stringent rules and penalties than those provided hereinabove that are applicable to limited registered longshoremen or to nonregistered longshoremen or to both such groups may be adopted or modified by unanimous action of the Joint Coast Labor Relations Committee and, subject to the control of such Committee so exercised, more stringent rules and penalties applicable to limited registered men or nonregistered men or to both groups that are pro-

vided in existing and future local joint working, dispatching and registration rules and procedures or by mutually agreed practices shall be applicable."

Pursuant to this understanding, and to carry out its intent, and pursuant to other contract provisions (a) the 1958 Memorandum as to Registration and Deregistration—including its provisions for a review of the entire record of a limited registration Class B longshoreman at the time he is considered for promotion and the § 9(xi) provisions that such a longshoreman can be deregistered for any cause—was adopted; (b) the JPLRC prepared the applications for limited registration Class B status, issued them, issued its letter of February 25, 1959, agreed to the provisions set out in its minutes of June 17, 1959, and distributed excerpts from the 1958 memorandum and these minutes; and (c) the union and the JPLRC representatives warned plaintiffs of their need to obey all the rules on pain of deregistration.

58. The evidence establishes that the conduct of both the ILWU and its Local 10 in the negotiations leading to and agreeing upon the explicit promotion standards was carried on with motives only of good faith and honesty in an effort to reach the best agreement for the interests of the collective bargaining unit as a whole and without in any way sacrificing the meritorious positions of any of the individuals in the bargaining unit.

59. During the negotiations, the PMA carried on a good-faith effort to see to it that there would be an upgrading of the longshore work force and to enforce the commitment obtained from the ILWU for good and adequate consideration that it would participate in such an upgrading program.

60. In the spring of 1963, through the good faith collective bargaining described above, the parties reached agreement on the explicit promotion standards which included four substantive standards. They agreed that a limited registration Class B longshoreman would not be eligible to be promoted (a) if he failed

to meet the 70% availability standard, unless he established a good and satisfactory reason therefor, or (b) if he dropped 10 or more LMO hours, or (c) if he had been suspended by the JPLRC for being involved in a work disruption in which alcohol was a significant factor, or (d) if he had failed to pay his pro-rata on time on 8 or more occasions or, if he had an otherwise blemished record, had failed to pay his pro-rata on time on 6 or more occasions. The explicit promotion standards also included provision that anyone who failed to meet these standards would be deregistered and that the standards should be uniformly applied to all applicants from the limited registration Class B list.

61. On the basis of all of the evidence not subject to legal objection, this Court finds that the explicit promotion standards were rationally related to the needs of the industry as they existed in the spring of 1963 and were not arbitrary, capricious, in bad faith, nor were they a pretext for engaging in any unlawful, illegal or improper conduct against any limited registration Class B longshoreman, including the plaintiffs individually and as a group. The parties reasonably and in good faith believed that they were, and the Court specifically finds that they were, a fair, honest and reasonable resolution of the issues presented by the manpower needs of the industry for competent and reliable workers under the Mechanization and Modernization program as these needs appeared to them to exist, and as in fact they did exist, in the spring of 1963.

62. As they provided in the representation of the longshoremen in all matters relevant to this proceeding, the ILWU and its Local 10 provided fair representation to all of the employes in the collective bargaining unit - including each of the limited registration longshoremen and accordingly each of the plaintiffs - in negotiating the explicit promotion standards. In this representation, neither the ILWU nor its Local 10 acted on the basis of any malice, hostility, bad faith, animosity, or ill-will toward any

of the persons in the collective bargaining unit, including the plaintiffs as a group and each of them, and neither of the union defendants engaged in any invidious, arbitrary, discriminatory, capricious, irrational or unfair activity in regard thereto.

The implementation of the explicit promotion standards.

63. During the spring of 1963, the JPLRC reviewed all the data available to it and reached findings of fact as to the compliance of each of the limited registration Class B longshoremen with the four substantive promotion standards.

64. On March 28, 1963, the JPLRC sent notices of deregistration to each of the 88 limited registration Class B longshoremen whose record indicated that he had failed to maintain 70% availability in one or more 30-day periods since the previous check on availability in April 1962. Grievances with respect to these notices were filed by 76 of those sent such notices.

65. At its meeting on April 24, 1963, the JPLRC held hearings on these grievances and made determinations in respect to 88 cases. The final decisions with respect to 16 cases were that the men be deregistered; with respect to 57 cases, the decisions were that the man be reinstated with probation; with respect to 6 cases, the decisions were that the man be reinstated without probation; and 9 cases were held over for medical reasons. On the basis of all the evidence not subject to legal objection, the Court finds that these procedures were due, fair, appropriate and reasonable.

66. Due notice was given to the limited registration Class B longshoremen early in May 1963 that they could apply for promotion to fully registered Class A status, that those who did not qualify for promotion would be deregistered, and that any limited registration Class B man was entitled to use the grievance machinery in case he was notified that the information in the hands of the JPLRC indicated that he was not qualified for promotion or had given cause for deregistration.

67. The JPLRC issued applications for promotion, and all limited registration Class B longshoremen filed such applications in May 1963, with only a few exceptions. Plaintiffs James Green, James Lankford and Thomas E. Nisby did not even file application for promotions. All other plaintiffs did file applications for promotion to Class A full registration status.

68. During the period beginning no later than on or about May 10, 1963, Local 10 of the ILWU had made arrangements under which it provided Asher Harer to act as ombudsman-advocate on behalf of each of the limited registration Class B longshoremen who had failed to receive notice that he had satisfied all of the explicit promotion standards. Asher Harer was a member of Local 10 who had had experience as a record checker for over 10 years and who was highly sympathetic to the plaintiffs and as ombudsman-advocate on behalf of them and other limited registration Class B longshoremen he conducted himself in an enterprising and industrious manner. He was a member of a faction in Local 10, apparently opposed to that including Harry Bridges, William Chester, Robert Rohatch, Tommie Silas, J. Walker, Albert James, Carl Smith and others.

69. Asher Harer as the ombudsman-advocate carried on a vigorous effort, for long hours over many weeks of time, to assist each of these limited registration Class B longshoremen in getting full information as to the facts that appeared to prevent such longshoreman's being found to have met all of the explicit promotion standards, to gather evidence that would be helpful to the limited registration Class B longshoreman in proving that he had satisfied all these standards, and in developing arguments to support his grievances.

70. The ombudsman-advocate presented evidence that he gathered as to 30 or more individual cases to the union representatives on the B-list panel of the JPLRC. and the members of that panel exchanged evidence with the ombudsman-advocate. As a

result of these cooperative efforts, agreement was reached among the members of the B-list panel of the JPLRC and the ombudsman-advocate as to 28 individuals. They agreed that 9 limited registration Class B longshoremen who had previously apparently failed to satisfy the explicit promotion standards did actually satisfy these standards. These men were subsequently promoted. As to the other 19, they agreed that they were properly deregistered. There was disagreement between the ombudsman-advocate and the members of the JPLRC with respect to two limited registration Class B longshoremen, both of whom are plaintiffs in this proceeding.

71. By May 15, 1963, the JPLRC had determined that approximately 408 of the 560 limited registration Class B longshoremen then registered in San Francisco had satisfied all of the explicit promotion standards.

72. By May 15, 1963, the JPLRC had determined that it needed more information with respect to the remaining applicants for promotion to the coveted seniority status of a fully registered Class A longshoreman.

73. Despite the fact that it had not then reached initial determinations on many of the applications on which such determinations could have been made, the JPLRC on May 15, 1963 agreed to promote the 408 limited registration Class B longshoremen who appeared to be in full compliance with the explicit promotion standards. On May 16, 1963, a substantial number of the 408 men on the JPLRC list of those apparently qualified for promotion were initiated into the Local 10 membership.

74. On the morning of May 17, 1963, the San Francisco longshore dispatch hall dispatched the 408 men on the JPLRC's May 15, 1963, list with the fully registered Class A longshoremen.

75. On May 17, 1963, the Joint CLRC exercised its ultimate control over the registered lists by setting aside the action of the JPLRC in promoting the 408 men to full registration Class A

status prior to the time it had reached initial determinations as to the status of the remaining limited registration Class B longshoremen. The Joint CLRC took the view, which this Court finds to have been fair and reasonable, that the implementation of the explicit promotion standards should not result in two groups of men among those promoted to the coveted seniority status of Class A full registration longshoremen in 1963 on the basis of whether they were promoted on May 15, 1963 or at a later date.

76. During the period of approximately three weeks following May 15, 1963, the JPLRC reached initial determinations with respect to virtually all of the limited registration Class B longshoremen who were not among the 408 listed in the May 15, 1963 minutes. The JPLRC held meetings at which individual longshoremen appeared and gave information. The JPLRC made a double check as to the LMO hours dropped by anyone who appeared to have dropped an excessive number of LMO hours. The JPLRC continued to study the information submitted by those men who had appeared at the hearings as to availability information in support of their cases.

77. By June 10, 1963, the members of each side of the B-list panel of the JPLRC had come to agreement as to their side's position as to what was the correct initial determination with respect to the 127 limited registration Class B longshoremen who were not on its list set out in the minutes of its meeting of May 15, 1963, or on the list of 16 of the limited registration Class B men deregistered for poor availability or the list of 9 men who were to provide further medical information that were in the minutes of its meeting of April 24, 1963, and had revised the May 15 initial determinations as to two of the 408 men. The B-list panel members on each side had communicated with the other side of the JPLRC, and both sides were in agreement as to the facts as to every limited registration Class B longshoreman. As a result, there were initial determinations on all the

applications of the limited registration Class B men except for individuals then in the armed services, individuals who had grievances pending as to pilferage, and individuals required to provide medical information.

78. By June 13, 1963, the respective sides of the JPLRC had advised their counterparts on the Joint CLRC of what had been done and the Joint CLRC had informally approved the results of the actions in administering the registration lists for the port of San Francisco.

79. In view of another question raised within Local 10, the JPLRC also decided that it should institute procedures to find out if there was any evidence that any limited registration Class B longshoreman who did not meet all the explicit promotion standards was included in the lists they were preparing to state those who were being promoted. It decided that it would correct any error of this type that was shown to exist.

80. During the period prior to June 17, 1963, the members of the JPLRC agreed on a new form of letter to be sent to the limited registration Class B longshoremen whose records indicated that they did not meet the explicit promotion standards. It was agreed that this form of notice would take the place of the form incorporated in the Memorandum as to Registration and Deregistration adopted by this same committee in 1958.

81. On June 17, 1963, the JPLRC formally concluded its work in administering the limited registration Class B list in San Francisco by sending out notices to 78 limited registration Class B longshoremen that they had been deregistered, by notifying 448 longshoremen that they had been promoted to the coveted seniority status of a Class A fully registered longshoreman, and by listing the individuals as to whom further consideration would have to be given before a final determination could be made because the man was in the armed services, or the man had a grievance pending as to pilferage, or because the man had

to provide information as to his future medical condition. Using the form of notice that it had adopted during the month of June, 1963, the JPLRC sent notices of deregistration to the 78 men. This notice advised each man that he had a right to file a grievance and that the grievance would be considered by the JPLRC.

82. The JPLRC gave public notice that it would welcome any evidence indicating that any limited registration Class B longshoreman who had not met any express promotion standard had been promoted in error. No evidence was submitted to indicate that any such errors had been made.

83. In reaching decisions as to the facts relevant to the explicit promotion standards in the case of each of the limited registration Class B longshoremen—including each of the plaintiffs—and in the application of the explicit promotion standards thereto, the ILWU and its Local 10 provided fair representation to all of the persons in the collective bargaining unit, including each of the plaintiffs. As they provided in the representation of the longshoremen in all matters relevant to this proceeding, the ILWU and its Local 10 provided fair representation to all of the employes in the collective bargaining unit—including each of the limited registration longshoremen and accordingly each of the plaintiffs—in negotiating the explicit promotion standards. In this representation, neither the ILWU nor its Local 10 acted on the basis of any malice, hostility, bad faith, animosity, or ill-will toward any of the persons in the collective bargaining unit, including the plaintiffs as a group and each of them, and neither of the union defendants engaged in any invidious, arbitrary, discriminatory, capricious, irrational or unfair activity in regard thereto.

The adjudication of plaintiffs' grievances.

84. Grievances with respect to the notices of deregistration dated June 17, 1963, were filed by 57 limited registration Class B

longshoremen, including all of the plaintiffs except Thomas Nisby and Alfred Straughter.

85. Each of the limited registration Class B longshoremen who had been denied promotion and who had filed a grievance was notified that the hearing on his grievance would be held at Pier 24 in San Francisco on July 9, 10 or 11, 1963.

86. During the period up to the time of each man's individual hearing, the union provided each man with information as to the issues of fact that were significant to his notice of deregistration, and Asher Harer continued to act as ombudsman-advocate to assist each of these men in regard to his grievance.

87. Each of the plaintiffs who had filed a grievance appeared at Pier 24 before the JPLRC on July 9, 10 or 11, 1963. Each was notified of the reason or reasons that indicated that he had not satisfied some one or more of the explicit promotion standards. Each was given an opportunity to challenge the factual basis for the reason given at a conference with JPLRC representatives. Such conferences with respect to dropping of LMO hours were scheduled to be held at the dispatching hall records office. and the conferences with respect to the time of payment of prorata were scheduled to be held at the office of the union where records as to these payments were maintained.

88. During the period from July 16 through July 18, 1963, conferences were held with each of the limited registration Class B longshoremen who wished to have a conference with respect to the factual issues of which they were given notice at their respective hearings on July 9, 10 and 11. Individual representatives of the JPLRC—from both Local 10 and the PMA—met with each individual man and went over the facts in his case with him. With the exception of Frank Nereu, there was no disagreement as to the basic facts. Stanley Weir disagreed with the inferences drawn from the evidence. Anthony Melvin disagreed with the

decision that certain hours he dropped for a short time were counted against him. Antonio Cafeteiro and Roger Fleeton had a disagreement with the committee as to the ultimate fact to be found on the basis of the evidentiary facts as to flopping on Sundays.

89. James Edwards, a representative of PMA on the JPLRC B-list panel, participated in the conference with Stanley Wier. They went over the evidence in detail. James Edwards determined that the evidence submitted by Stanley Weir in support of his claim that he did not square off a second time in the week of October 8-15, 1962, was insufficient to overcome the evidence before the JPLRC that he had squared off two times in this week, and James Edwards concluded that Stanley Weir had indeed dropped in excess of 10 LMO hours in violation of the rules and determinations of the JPLRC. The Court credits the testimony of James Edwards that he believed in good faith that Stanley Weir had actually dropped hours on this occasion.

90. As a result of the reviews carried on in these procedures in July, 1963, by the JPLRC, four limited registration Class B longshoremen received decisions setting aside their deregistrations. Twenty-six other limited registration Class B longshoremen obtained modifications in the findings as to the exact facts involved in their cases, but the modifications as to these men were insufficient to establish that the men had satisfied all the explicit promotion standards.

91. On all of the evidence not subject to legal objection, this Court finds that each of the plaintiffs did in fact engage in misconduct of such type and amount as to establish that he failed to satisfy one or more of the explicit promotion standards.

92. The decisions of the JPLRC in July, 1963, were reached through the same adjudicative process as that used by the JPLRC for issues of similar gravity and factual complexity during the period from 1959 to 1963, including issues as to whether or not an individual limited registration Class B longshoreman should

be deregistered or should be permitted to continue to work in the industry. This procedure is one it had followed in the past with respect to men who appeared to have failed to satisfy the 70% availability rule and men charged with other contract violations. The procedure that was followed had developed over the years of collective bargaining in the industry. This was a normal grievance process for this type of issue. The process employed was a reasonable, due, fair and appropriate grievance process for the adjudication of such issues.

93. On July 16, 1963, Local 10 instructed its representatives on the JPLRC to move in the next JPLRC meeting that the deregistrations of the limited registration Class B longshoremen who had failed to meet the explicit promotion standards only because of the dropping of LMO hours or the late payment of pro-rata be permitted to remain on the limited registration Class B list subject to a suspension and that they thereafter be promoted. Such motions were placed before the JPLRC by the Local 10 representatives. A disagreement was reached on the motions. It was the position of the PMA representatives that the JPLRC could not change the explicit promotion standards that had been adopted by the parties and approved by the Joint CLRC and that this issue could be raised only before the Joint CLRC. This disagreement was taken to the Joint Area LRC, where there was agreement that Local 10 could proceed with this issue only before the joint CLRC.

94. On July 22, 1963, the JPLRC reached agreement as to the merits of each of the grievances filed by the limited registration Class B longshoremen with respect to the notices of deregistration of June 17, 1963, and notices of these decisions were sent to the men who had filed grievances, including those who had been found to have satisfied the explicit promotion standards and those whose grievances were denied.

95. During the process the union took elaborate and detailed efforts to make certain that there would be no factual mistake that would cause the plaintiffs or the other limited registration Class B longshoremen to be denied promotion, and the union defendants became satisfied (a) that the PMA representatives and the JPLRC were similarly engaged in such efforts to be certain that there would be no factual mistake that would cause any of the plaintiffs or other limited registration Class B longshoremen to be denied promotion, and (b) that this effort was carried on jointly by the JPLRC representatives from both the union and the employer in determining the facts as to all of the limited registration Class B longshoremen who had filed grievances.

96. Throughout the proceedings in adjudication of the grievances filed by plaintiffs and other limited registration Class B longshoremen regarding the June 17 notices of deregistration, the ILWU and its Local 10 provided all of the longshoremen in its collective bargaining unit, including each of the plaintiffs, with fair representation. As they provided in their representation of the longshoremen in all matters relevant to this proceeding, the ILWU and its Local 10 provided fair representation to all of the employes in the collective bargaining unit—including each of the limited registration longshoremen and accordingly each of the plaintiffs—in negotiating the explicit promotion standards. In this representation, neither the ILWU nor its Local 10 acted on the basis of any malice, hostility, bad faith, animosity, or ill-will toward any of the persons in the collective bargaining unit, including the plaintiffs as a group and each of them, and neither of the union defendants engaged in any invidious, arbitrary, discriminatory, capricious, irrational or unfair activity in regard thereto.

The § 17.4 grievance procedure.

97. Each of the plaintiffs and the other limited registration Class B longshoremen whose deregistrations were sustained in July, 1963, was notified that he could use the § 17.4 procedure

of the PCLA by filing a discrimination grievance, which would institute a collateral attack upon the decision sustaining his deregistration, which collateral attack could be carried to the Coast Arbitrator by the individual man, who would have complete control of his own case in this procedure.

98. On July 25, 1963, Johnson Lee, one of the limited registration Class B longshoremen whose grievance against his deregistration was denied on July 22, 1963, filed a charge with the National Labor Relations Board.

99. On or about July 26, 1963, most of the plaintiffs and some other limited registration Class B longshoremen whose deregistrations had been sustained met and determined to file grievances under the § 17.4 procedure, and Stanley Weir prepared a form to state such a grievance and distributed it to the plaintiffs and other limited registration Class B longshoremen. It stated [Ex. 427]:

> "Your committee de-registered me on June 17. On July 24, I received your letter denying my hearing appeal. In so doing you consummated an action that is discriminatory. You have not judged all the men involved by the same standards.
>
> "I appeal your decision and request another hearing as stipulated, where I will prove and document this discrimination.
>
> "I have never been able to get from you an official statement specifying the alleged charges against me, nor did your committee produce documents to substantiate the charges.
>
> "Would you please correct this situation for the next hearing."

On July 27, 1963, most of the plaintiffs filed a discrimination grievance in these precise words.

100. On or about July 27, 1963, the plaintiffs considered the advisability of filing charges with the National Labor Relations Board.

101. During the period beginning July 25, 1963, the great bulk of the plaintiffs filed appeals from decisions denying them unemployment insurance benefits or had unemployment insurance benefit decisions favorable to them appealed by PMA.

102. On August 1, 1963, Stanley Weir filed his appeal against the denial of unemployment insurance benefits to him. It stated [Ex. IV]:

> "The reason for your decision is based upon information that I have not had any opportunity to confront or refute. At no time has the union or the employer presented a documentation of L.M.O. charges when both myself and anyone with power to find me guilty or innocent was present. (Local 10, I.L.W.U. is for returning even guilty LMO violators to work). (This, as of July 27, 1963).
>
> "I request my case be consolidated into the group appeal and that during the appeal and at the hearing the charges against me be complete, specific and completely documented so that I can finally have an opportunity to make my defense."

103. On or before August 3, 1963, the plaintiffs agreed not to carry their case to the National Labor Relations Board but instead to take it to the courts. They held a press conference and publicly announced this decision. This news was broadcast by radio and television and reported prominently in the San Francisco newspapers.

104. On or about August 15, 1963, the plaintiffs sent the telegram to Local 10, threatening it by stating that they would go to court if Local 10 did not get plaintiffs their "jobs back".

105. Plaintiffs knew that the announcement of their decision to go to court would cause a strong negative reaction among the members of Local 10 and officials of the ILWU.

106. On or about September 1, 1963, the plaintiffs retained Sidney Gordon as their attorney "to get their jobs back". The initial task he took on was to handle their unemployment insurance litigation.

107. Extensive litigation was instituted by Sidney Gordon before the unemployment insurance referee, the appeals board, the California Superior Court, the California District Court of Appeal, and the California Supreme Court with respect to the unemployment insurance issues raised by plaintiffs so that months of time were devoted to these proceedings. During these proceedings, oral notice was given to the plaintiffs through their then attorney, Sidney Gordon, that the JPLRC had determined that the § 17.4 grievance procedure would be carried forward as soon as the transcript of the unemployment insurance hearings was available. The taking of evidence before the referee was concluded on April 1, 1964.

108. Because of the time involved in this unemployment insurance litigation that was carried on at length in accordance with the demand of Stanley Weir and because of the desirability of not duplicating the taking of live testimony, the delay in proceeding to the actual grievance hearings was reasonable and necessary.

109. On April 15, 1964, plaintiffs filed their complaint in this matter in which they alleged that they had already exhausted the grievance-arbitration procedure in July, 1963, and prayed that the use of the grievance procedure be enjoined.

110. On May 18, 1964, notices were sent to the plaintiffs who had filed discrimination grievances, notifying them that their grievances were being sent down for a hearing under the § 17.4 procedure of the PCLA.

111. On May 22, 1964, Sidney Gordon, counsel for the plaintiffs, wrote to George R. Andersen, counsel for the defendant unions, saying [Ex. LS]:

> "Please be advised that I have instructed my clients in the above entitled matter [*Williams v. PMA*], and those persons I represent in the subject controversy, not to be present pursuant to those Notices respecting re-hearing on their de-registrations which are set to commence next week.

"Our position is that all matters of Discovery are within the exclusive jurisdiction of the Court, further, that the extra-judicial steps now attempted, and, without provision for representation by counsel of Record, subsequent to commencement of the action, and with respect to the very issues of law and fact advanced by the complaint, in particular, before a Committee, whose members are individually sued, is, clearly, a usurpation of the province of the Court."

112. On May 25, 1964, George R. Andersen responded to the foregoing communication he acknowledged receiving from Sidney Gordon, saying [Ex. LT]:

"For your general information, the grievance hearing which is scheduled is pursuant to the grievance/arbitration machinery set forth in the longshore contract, which machinery provides in effect that this procedure is the sole and exclusive remedy in the event grievances arise of the nature covered by what we believe to be the claims of your clients.

"In other words, the contract provides for arbitration; and we suggest to you that if you have a cause of action, you may be seriously jeopardizing it by refusing to follow the arbitration procedure.

"I suggest you let us know by return mail if you are refusing to arbitrate, or whether your clients will appear."

113. On May 25, 1964—the day preceding the first of these § 17.4 grievance hearings—Sidney Gordon, counsel for the plaintiffs, appeared *ex parte* in this case in this Court without notice to the defendants and obtained a temporary restraining order against the holding of the § 17.4 grievance procedure hearings on the plaintiffs' grievances. This temporary restraining order was served shortly after the proceedings began. Upon service of the temporary restraining order, the proceedings then recessed.

114. A hearing was thereafter held in this case in this Court before Judge Albert C. Wollenberg on June 2, 1964, on plaintiffs' request for a preliminary injunction to prohibit the JPLRC from carrying on the grievance procedure under § 17.4.

115. During the hearing before Judge Wollenberg, counsel for PMA and counsel for the ILWU and Local 10 confirmed, and represented to the Court and to counsel for plaintiffs, that the ILWU-PMA contract provided a grievance procedure for issues raised by the plaintiffs, that plaintiffs were entitled to participate therein using their own counsel and with full control of their cases, and that this would lead to an arbitration before Professor Kagel of Boalt Hall Law School of the University of California with respect to claims raised by the plaintiffs. When Judge Wollenberg indicated that the injunction prayed for would not issue, Sidney Gordon nevertheless declared that he would not participate and would not permit the plaintiffs to participate in these grievance procedures. Judge Wollenberg then advised Sidney Gordon of the law as to the exhaustion of the grievance-arbitration process, pointed out he would be taking a severe risk for his clients if he failed to exhaust the available grievance-arbitration procedures under the collective bargaining contract, directed defendants to communicate with Sidney Gordon at all steps of this procedure as counsel for the plaintiffs, and had Sidney Gordon give the defendants an address that could be used for such communications.

116. Thereafter, the JPLRC carried on its proceedings under § 17.4 with respect to the discrimination grievances filed by plaintiffs and reached decisions thereon. Notices of these decisions were given to Sidney Gordon and to each of the plaintiffs; each was (in the notice documents) informed of the procedure by which an appeal to the next step of the grievance procedure could be taken.

117. Thereafter, Sidney Gordon, on behalf of the plaintiffs, brought plaintiffs' grievances to the Joint CLRC.

118. On November 20, 1964, after Sidney Gordon and counsel for the PMA and counsel for the ILWU were given the opportunity to file briefs with respect to the issues, the Joint CLRC held its hearing on the appeals. Sidney Gordon did not make a personal appearance. One of the plaintiffs, Cleo Love, appeared at the hearing. He admitted that he had in fact not met the explicit promotion standards and asserted that these standards were contrary to the contract and should be rescinded.

119. The minutes of the Joint CLRC meeting on November 20, 1964, show that the following issues were considered by the committee at that time:

> The Joint CLRC held that the explicit promotion standards did not establish any new rules or penalties, that they were adopted in full satisfaction of all contract requirements, that they were applied uniformly to all applicants for promotion, that no person was promoted who failed to satisfy any of the explicit promotion standards, that each of plaintiffs did in fact fail to satisfy one or more of the explicit promotion standards, that the explicit promotion standards were material and relevant to upgrading the longshore work force, that this purpose was reasonable, rational and appropriate, that the explicit promotion standards were not in violation of any terms of the collective bargaining contract, that the explicit promotion standards were not retroactive or retrospective in effect, and, further, that neither in negotiating the explicit promotion standards nor in adjudicating grievances in regard thereto did the International ILWU or Local 10 engage in any discrimination either in favor of or against any person because of membership or nonmembership in the union, activity for or against the union or absence thereof, or race, creed, color, national origin or religious or political beliefs.

Each of the plaintiffs was entitled to take to the Coast Arbitrator his appeal from the decision of the Joint CLRC on November 20, 1964.

120. The explicit promotion standards, and the form of the letter used to notify the plaintiffs of their deregistration under date of June 17, 1963, were duly approved by the final action of the Joint CLRC on November 20, 1964, where express approval was given to the explicit promotion standards, both with respect to their substance and to the formalities of their adoption. They had previously been duly approved by the Joint CLRC by its informal action prior to June 17 (under which the July 17 notices were issued) and by the Joint CLRC's formal action of June 24, 1963, approving the explicit promotion standards and the application thereof as a general course of action in exercising its control over the registration lists for the port of San Francisco.

121. During the proceedings before Judge Wollenberg on June 2, 1964, Judge Wollenberg had advised Sidney Gordon that the case would be kept open in the files of the Court and that Sidney Gordon could have prompt access to this Court should the defendants fail to provide due, fair, reasonable and appropriate hearings in the grievance-arbitration process to the plaintiffs in accordance with the commitments that their counsel had made in this Court. Thereafter, Judge Wollenberg's directions that notice be given to plaintiffs, and their counsel, Sidney Gordon, of all subsequent steps in the grievance-arbitration process were followed. No contention was made in this case in this Court that the grievance-arbitration procedures carried on by the defendants were not in accordance with the assurances given to Sidney Gordon by Judge Wollenberg.

122. Under date of December 18, 1964, each of the plaintiffs and Sidney Gordon was given notice of the Joint CLRC decision. The notice set forth details as to the procedure to be used to take the matter to arbitration before the Coast Arbitrator and the time limits thereon.

123. Each of the plaintiffs had the right to continue to use the § 17.4 procedure with respect to his grievance by filing an appeal from this decision of the Joint CLRC to the Coast Arbitrator. In following such procedure, the individuals had full control of their respective cases in perfecting their appeals, in subpenaing witnesses and documents, in presenting their evidence, and in arguing their contentions. They were free to appear individually or as a group and to have individual or group counsel represent them.

124. In the course of the grievance procedures up through the notices issued on December 18, 1964, the ILWU and its Local 10 provided fair representation to all of the employees in the collective bargaining unit, including each of the limited registration longshoremen and accordingly each of the plaintiffs. In this representation, neither the ILWU nor its Local 10 acted on the basis of any malice, hostility, bad faith, animosity, or ill-will toward any of the persons in the collective bargaining unit, including the plaintiffs as a group and each of them, and neither of the union defendants engaged in any invidious, arbitrary, discriminatory, capricious, irrational or unfair activity in regard thereto.

125. On May 4, 1965, the trial examiner of the National Labor Relations Board issued his intermediate report in which he stated his conclusion that the explicit promotion standards were adopted through breach of the duty of fair representation, citing *Miranda Fuel Company, Inc.*, 140 NLRB 181 (1962). On May 17, 1965, the plaintiffs, on behalf of all persons similarly situated, filed a charge with the Labor Board asserting that they had been deregistered as a result of the breach of the duty of fair representation as decided by the trial examiner. They asserted they had exhausted their remedies under the grievance machinery procedure of the contract in November, 1964. General Counsel of the Labor Board, apparently on the theory that the period of limitations under the National Labor Relations Board ran from an earlier

act of the JPLRC and had expired or on the basis of his discretion not to proceed with a charge filed with the Labor Board, refused to permit these plaintiffs to join in the contentions made by Johnson Lee and the other limited registration Class B longshoremen who had filed charges in 1963.

126. The Board issued its decision in *Pacific Maritime Association (Johnson Lee)*, on November 29, 1965, which is reported at 155 NLRB 1231 (1965). Its decision was contrary to that proposed by the trial examiner. It concluded that the explicit promotion standards had been adopted to meet "the industry's increasing need for a greater number of steady, highly qualified and responsible longshoremen by affording fully registered status to the most qualified of the limited registered longshoremen and abolishing the Class B list". It sustained the use of the late payment of pro-rata as an explicit promotion standard, the decision that those who failed to meet the explicit promotion standards would be deregistered, and the existence of the Class B limited registration list of men who would be subject to stricter rules and more stringent penalties than the Class A longshoremen.

The plaintiffs' procedural complaints.

127. On or about March 28, 1963, Stanley Weir received notice that he had been deregistered because certain data in the hands of the JPLRC indicated that he had failed to meet the 70% availability test. Upon receipt of this notice, he went to the Local 10 office to get information as to what was the basis for the charge that he had failed to meet this test. He was then given assistance by officials of Local 10 to determine what was involved. Local 10 communicated on his behalf with the Pacific Maritime Association and got information as to the period of time involved. Thereupon, Stanley Weir himself went to the PMA office and talked to PMA representatives on the Class B panel of the JPLRC and got information from them as to the period of time over

which it was asserted he had failed to meet the 70% availability standard and as to the exact details of how that standard was applied. Thereupon Local 10 had discussions of his case with PMA and wrote Stanley Weir telling him that he should appear at the hearing and present the facts and indicating that, in view of the information developed, it appeared that he would be successful in getting the deregistration stricken from his record.

128. On April 24, 1963, Stanley Weir did appear before the JPLRC and did present facts as to the period of time that was under consideration by the JPLRC on the basis of data it had developed. It appeared that his actual availability had been between 69% and 70% in one thirty-day period and that his sunburned condition after his vacation made him unable to perform longshore work for some days, so that his record showed that he fell below 70% availability. Upon Stanley Weir's presentation to the JPLRC, it reversed the deregistration.

129. In May, 1963, Stanley Weir learned that the JPLRC was apparently considering whether or not he had dropped an excessive number of LMO hours and whether or not he would be promoted to the coveted seniority status of the Class A fully registered longshoreman. He thereupon started a series of written communications to the PMA, to the ILWU and to Local 10, asserting that he had not dropped an excessive number of LMO hours and protesting the procedures being used.

130. On May 14, 1963, Stanley Weir sent a telegram to William Chester at the ILWU and John Trupp at the PMA.

131. Either before or shortly after Stanley Weir's first such written communication to PMA and the ILWU on this subject, he had met with Asher Harer, who was acting as ombudsman-advocate for the limited registration Class B men who were in situations similar to that of Stanley Weir. The two reviewed in detail the issues that had been raised on this subject. Thereafter,

on May 16, 1963, Asher Harer reported to the Local 10 membership that he had studied a number of cases, including that of Stanley Weir, and that he disagreed with the conclusions of the union representatives on the B-list panel of the JPLRC that Stanley Weir had dropped an excessive number of LMO hours.

132. As a result of the questions raised by Stanley Weir directly and by Asher Harer and others, Local 10 directed that its representatives on the B-list panel of the JPLRC make a double check as to every man who appeared to have dropped an excessive number of LMO hours to make certain that no man was denied promotion because of an erroneous decision as to the facts involved. Thereafter, such double checks were made by the union representatives on the JPLRC.

133. At the same time the employer representatives on the JPLRC made independent checks with respect to every man who was initially determined to have dropped an excessive number of LMO hours. This was to avoid any factual errors. By early June these reviews had been completed and changes made in the records as to the dropping of LMO hours. Adjustments were made for errors that were found.

134. On May 14, 1963, Stanley Weir objected to the promotion of some of the limited registration Class B longshoremen prior to the JPLRC's issuing a determination in his favor with respect to his case. He said he should be promoted, that he could show that he had not dropped an excessive number of LMO hours, and that he should be promoted with the others who had been found to have met the explicit promotion standards and at the same time.

135. On May 17, 1963, the Joint CLRC set aside the action of the JPLRC that had promoted 408 limited registration Class B men to the status of a fully registered Class A longshoreman and directed that the JPLRC make initial determinations as to all of the applications and then promote, at the same time, all of the men who met the explicit promotion standards.

136. On June 10, 1963, Stanley Weir made a further written challenge to the procedure and to the JPLRC conclusions for a determination sustaining the earlier findings that he had dropped an excessive number of hours. His letter to this effect of June 10, 1963, was on or shortly after the date on which the JPLRC members informally concluded that he had dropped an excessive number of LMO hours after having concluded its double check process.

137. The JPLRC gave notice in the minutes of June 17, 1963, which were made public to the longshoremen, asking that facts be submitted to it that might indicate that any limited registration Class B longshoreman had been approved for promotion although he had failed to meet one or more of the explicit promotion standards. It stated that any such promotion would be set aside on establishing such facts.

138. After Stanley Weir received his notice of deregistration under date of June 17, 1963, he continued to send written communications to the union and to the PMA asserting that he was without knowledge as to the issues that were involved in his case and so was not able to prepare his case. This Court finds that Stanley Weir, previous to these communications, had reviewed these issues in detail with Asher Harer and that Asher Harer had prepared detailed documentary material to support Stanley Weir's contentions that he had not dropped an excessive number of LMO hours. When Stanley Weir appeared before the JPLRC at Pier 24 on July 11, 1963, he gave full explanations of why he should not be charged with dropping any LMO hours, except for 2-½ hours, and the report of Asher Harer with respect to his case was read to the JPLRC. Stanley Weir's oral presentation and the Asher Harer report were substantially the same.

139. The evidence in this record fails to show that Stanley Weir was in any way prejudiced in the preparation and presentation of his evidence and his argument in support of his grievances.

He, like all the other plaintiffs, had full opportunity to learn of the factual issues that led to the notice of June 17, 1963, that he had been deregistered, to gather his evidence, to marshall his facts, to present his argument, and he had the benefit of the extraordinary assistance of Asher Harer in preparing his case for the grievance-arbitration process. There is no showing of any merit in the technical claims of insufficiences in the procedures used under the ILWU-PMA contract. Stanley Weir had a due, fair, appropriate and reasonable hearing.

140. Evidence was offered that there was rumor or gossip on the San Francisco waterfront that Stanley Weir had been selected for deregistration by the ILWU and the PMA because he was a thorn in the side of Harry Bridges, then president of the ILWU, and Paul St. Sure, then president of the PMA. Evidence was offered through deposition testimony from the president of Local 13 of the ILWU in Los Angeles, Curt Johnston, that this rumor had been told to him by a PMA employe in Los Angeles, Robert Hall. However, Robert Hall testified in the Court and denied that he had ever made such a statement to Curt Johnston. The Court credits the testimony of Robert Hall and finds that he did not relate this rumor or gossip to Curt Johnston. The Court notes that Stanley Weir testified that this rumor stated a hypothesis that he felt could be drawn from the evidence, but he testified further that this was not his conclusion from the evidence. From all of the evidence in the record not subject to legal objection, the Court finds (a) that there is not proof in this record that Stanley Weir was considered to be a thorn in the side of Harry Bridges by Harry Bridges or Paul St. Sure or by any agent of the ILWU, Local 10 or the PMA, or that Stanley Weir was considered to be a thorn in the side of Paul St. Sure by Paul St. Sure or Harry Bridges or by any representative of the ILWU, Local 10 or the PMA, and (b) that it has not been established that any invidious or arbitrary or discriminatory considerations or any hostility, ani-

mosity, malice, ill-will, invidiousness, bad faith, or "frame-up" contributed in any way to the decision that Stanley Weir stand deregistered or to the decision that any of the other plaintiffs or the plaintiffs as a group or the limited registration longshoremen who were deregistered as a group, were deregistered for such reasons. It finds to the contrary, that Stanley Weir and each of the other plaintiffs was deregistered for good and sufficient cause.

141. In their Fourth Amendment Complaint, plaintiffs alleged that they had exhaused all appeals and had "been totally deregistered by a final decision made by the Joint Coast Labor Relations Committee on November 20, 1964". The Court finds that the ILWU-PMA contract gave Stanley Weir and each of the plaintiffs or any group of two or more or all of the plaintiffs a remedy before the Coast Arbitrator by appeal with respect to all of the issues decided by the Joint Coast Labor Relations Committee on November 20, 1964, and that they and each of them refused to use this remedy.

Except as found hereinabove, this Court specifically finds on all the evidence not subject to legal objection that plaintiffs have failed to establish each and every of their allegations in their Fourth Amended Complaint.

From the foregoing Findings of Fact the Court draws the following

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and the subject matter of this action under § 301(a) of the Labor-Management Relations Act, 29 U.S.C. § 185, and 28 U.S.C. § 1337.

2. Defendant Pacific Maritime Association is an employer within the meaning of § 2(2) of the National Labor Relations Act, 29 U.S.C. § 152(2). Defendant International Longshoreman's and Warehousemen's Union is the certified collective bargaining representative for all longshoremen employed by PMA

and is recognized as such under § 2(5) of the Act, 29 U.S.C. § 152(5). Defendant International Longshoremen's and Warehousemen's Union Local No. 10 is the chartered local affiliate of the International in the Port of San Francisco.

3. Plaintiffs have standing to bring this action.

4. At all times relevant to this case, the ILWU and the PMA were parties to the ILWU-PMA collective bargaining contract.

5. As the certified collective bargaining representative, defendant International Longshoremen's and Warehousemen's Union owed to all persons in the bargaining unit—and to the plaintiffs at all time material to their claims—a statutory duty of fair representation to represent all members of the bargaining unit fairly and to refrain from arbitrary, discriminatory or bad faith conduct.

6. The exclusive representative for collective bargaining purposes of employes in a collective bargaining unit has no duty to try to assist an individual employe in covering up the true facts with respect to an issue involving him that is being considered in the grievance-arbitration process.

7. The explicit promotion standards were authorized by, and adopted in accordance with, § 17.851 of the Pacific Coast Longshore Agreement, a basic contract document of the ILWU-PMA collective bargaining contract, were duly and properly adopted by the parties to the ILWU-PMA collective bargaining contract, and became part of that contract as an explication of the terms of the 1958 Memorandum as to Registration and Deregistration, another part of that contract.

8. The ILWU and its Local 10 provided fair representation to the members of the bargaining unit in the negotiation of the explicit promotion standards. These negotiations were carried on without breach of the duty of fair representation and without malice or hostility or animosity, ill-will or bad faith and without any arbitrary, unreasonable, invidious, discriminatory or bad faith conduct.

9. The provisions of the explicit promotion standards were fair, reasonable, rational and relevant terms dealing with misconduct that was known to be misconduct for which deregistration might be the penalty at the time that the individual limited registration longshoreman engaged in misconduct. The terms of the explicit promotion standards are fair and not capricious or arbitrary.

10. The true purpose or real motivation of the parties to the ILWU-PMA contract in formalizing the explicit promotion standards and in implementing them was to meet the industry's increasing need for a greater number of steady, highly qualified, and responsible longshoremen. To that end, the defendants jointly promulgated appropriate, fair and reasonable guides for the selection of the best-qualified employes.

11. The ILWU and its Local 10 provided fair representation to the members of the bargaining unit in the implementation of the explicit promotion standards. The implementation of these standards was carried on without breach of the duty of fair representation and without malice or hostility or animosity or ill-will or bad faith and without any arbitrary, unreasonable, invidious, discriminatory or bad faith conduct.

12. The employer owes no duty of fair representation to the employes working for it or in the collective bargaining unit of which its employes are members or any of them. The employer is not liable to its employes for the consequences of its engaging in hard bargaining with the union in an effort to get a bargaining contract that is for the employer's best interests or in implementing that contract.

13. The procedures for handling the grievances of the plaintiffs were fair, due, appropriate and reasonable for the disposition the issues in the grievance-arbitration process with respect to the deregistration notices sent to the plaintiffs.

14. The ILWU and its Local 10 provided fair representation to the members of the bargaining unit in the adjudication of the grievances of the plaintiffs with respect to the explicit promotion standards and their implementation. These grievances were adjudicated without breach of the duty of fair representation and without malice or hostility or animosity or ill-will or bad faith and without any arbitrary, unreasonable, invidious, discriminatory or bad faith conduct.

15. The plaintiffs are not entitled to relief in this Court with respect to their deregistrations because they failed and refused to exhaust the grievance-arbitration procedure of the ILWU-PMA contract, which they could have exhausted by taking their grievances to the Coast Arbitrator after receiving the notices of the decision of the Coast Labor Relations Committee on November 20, 1964, which were dated December 18, 1964.

16. The grievances of the plaintiffs claiming that they did in fact satisfy the explicit promotion standards were not meritorious grievances.

17. The ILWU and the PMA are authorized under the law, and under the ILWU-PMA collective bargaining contract, to maintain the distinctions existing between limited registration Class B longshoremen having junior seniority and fully registered Class A longshoremen with a superior seniority status.

18. Neither the ILWU nor its Local 10 was in breach of the duty of fair representation in failing to obtain agreement by the PMA to strike out of the ILWU-PMA contract any of the provisions for registration status that had been in effect since 1934, or that were adopted prior to December 31, 1964.

19. The dissatisfaction of the plaintiffs with the explicit promotion standards did not establish that there was a breach of the duty of fair representation.

20. Judgment is to be entered in favor of defendants and against plaintiffs, with costs to the defendants.

Dated: Aug 27 1976

GEORGE B. HARRIS
United States District Judge

EXCERPTS FROM THE EXHIBITS IN EVIDENCE

EXHIBIT I

PACIFIC COAST LONGSHORE AGREEMENT

THIS AGREEMENT, dated June 16, 1961 and amended June 22, 1962, is by and between Pacific Maritime Association (hereinafter called "the Association"), on behalf of its members (hereinafter designated as "the Employers" or the "individual employer"), and the International Longshoremen's and Warehousemen's Union (hereinafter designated as "the Union"), on behalf of itself and each and all of its longshore locals in California, Oregon and Washington (hereinafter designated as "longshore locals") and all employees performing work under the scope, terms and conditions of this Agreement.

The parties hereto are the International of the International Longshoremen's and Warehousemen's Union and the coastwide Pacific Maritime Association. All property rights in and to the Pacific Coast Longshore Agreement are entirely and exclusively vested in the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union respectively, and their respective members. In the case of the International Longshoremen's and Warehousemen's Union, a majority of the members of both the individual and combined locals covered by this Agreement shall be necessary to designate any successor organization holding property rights and all benefits of this Agreement, and if an election is necessary to determine a majority of both individual and combined locals in order to establish the possessors of all rights and benefits under this Agreement, such election shall be conducted under the auspices and the supervision of the Coast Arbitrator provided for in Section 17, provided that such designation or election is not in conflict with any paramount authority or lawful or statutory requirements.

SECTION 1

SCOPE OF THIS AGREEMENT AND ASSIGNMENT OF WORK TO LONGSHOREMEN

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SECTION 2

STRAIGHT AND OVERTIME HOURS

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SECTION 3

GUARANTEES

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SECTION 4

SCHEDULED DAY OFF

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SECTION 5

HOLIDAYS

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SECTION 6

WAGES

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SECTION 7

VACATIONS

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SECTION 8

HIRING, DISPATCHING, REGISTRATION AND PREFERENCE

8.1 Dispatching halls.

8.11 The hiring and dispatching of all longshoremen shall be through halls maintained and operated jointly by the International Longshoremen's and Warehousemen's Union and the

Pacific Maritime Association in accordance with the provisions of Section 17. There shall be one central dispatching hall in each of the ports with such branch halls as shall be mutually agreed upon. All expense of the dispatching halls shall be borne one-half by the local union and one-half by the Employers.

8.12 Any longshoreman who is not a member of the Union shall be permitted to use the dispatching hall only if he pays his pro rata share of the expenses related to the dispatching hall, the Labor Relations Committee, etc. The amount of these payments and the manner of paying them shall be fixed by the Joint Port Labor Relations Committees.

8.13 Any non-Association employer shall be permitted to use the dispatching hall only if he pays to the Association for the support of the hall the equivalent of the dues and assessments paid by the Association's members. Such nonmember employers shall have no preference in the allocation of men, and shall be allocated men on the same basis as Association members.

8.14 Longshoremen not on the registered list shall not be dispatched from the dispatching hall or employed by any employer while there is any man on the registered list qualified, ready and willing to do the work.

8.2 Dispatching hall personnel.

8.21 The personnel for each dispatching hall, with the exception of Dispatchers, shall be determined and appointed by the Joint Labor Relations Committee of the port. Dispatchers shall be selected by the Union through elections in which all candidates shall qualify according to standards prescribed and measured by the Joint Labor Relations Committee of the port. If it fails to agree on the appropriate standards or on whether a candidate is qualified under the standards, the dispute shall be decided in accord with provisions of Section 17.

8.22 The term of office of any Dispatcher shall be at least one year.

8.23 All personnel of the dispatching hall, including Dispatchers, shall be governed by rules and regulations of the Joint

Port Labor Relations Committee, and shall be removable for cause by the Joint Port Labor Relations Committee.

8.24 The Association shall be permitted to maintain a representative in the dispatching hall. The Joint Port Labor Relations Committee shall permit any authorized representative of the Association or the Union to inspect dispatching hall records.

8.3 Registration.

8.31 The Joint Port Labor Relations Committee in any port, subject to the ultimate control of the Joint Coast Labor Relations Committee, shall exercise control over registered lists in that port, including the power to make additions to or subtractions from the registered lists as may be necessary. In each port there shall be maintained a list of longshoremen showing their registration status under this Agreement. When objecting to the registration of any man, members of the Joint Port Labor Relations Committee shall be required to give reason therefor.

8.32 Any longshoreman registered by a Joint Port Labor Relations Committee in accordance with this Agreement shall thereby acquire joint coastwide registration under the Pacific Coast Longshore Agreement and the Master Agreement for Clerks, Checkers, and Related Classifications. The rights and obligations of coastwide registration in regard to transfers between ports, visiting, and leaves of absence are set forth in Supplement I to this Agreement. The rights and obligations of coastwide registration in regard to transfer of registered longshoremen to registered clerk status and vice versa are set forth in Supplement II to this Agreement.

8.33 Either party may demand additions to or subtractions from the registered lists as may be necessary to meet the needs of the industry.

8.34 Each registered longshoreman has the obligation to request a leave of absence if he intends to absent himself from work for a period of thirty (30) days or longer and in other circumstances as may be covered by port rules under Supplement

I. A registered longshoreman who fails to work for thirty (30) days, except when on approved leave, and whose facts and reasons for such absence are not acceptable to the Joint Port Labor Relations Committee, may be de-registered.

8.4 Preference of employment.

8.41 First preference of employment and dispatch shall be given to fully registered longshoremen who are available for employment covered by Section 1 of this Agreement in accordance with the rules and regulations adopted by the Joint Port Labor Relations Committee. A similar second preference shall be so given to limited registered men. The Joint Coast Labor Relations Committee shall be authorized to effectuate such perferences in such manner and for such times and places as it determines in its discretion.

8.42 Dispatching of men and gangs shall be under the principle of low-man, low-gang, first-to-be-dispatched, except where local dispatching rules provide otherwise for dispatching of special skilled men and gangs.

8.43 There shall be no favoritism or discrimination in the hiring or dispatching or employment of any longshoreman qualified and eligible under the Agreement.

8.44 Any longshoreman or dispatching hall employee found guilty by the Joint Port Labor Relations Committee of favoritism or discrimination or bribery shall immediately be discharged and dropped from the registered list.

SECTION 9

PROMOTIONS

* * *

SECTION 10

ORGANIZATION OF GANGS, GANG SIZES AND MANNING, AND METHODS OF DISPATCHING

10.1 The Joint Port Labor Relations Committee shall determine the methods of dispatching for the port. Gangs and men

shall be dispatched only as ordered by the employer. The Employers shall have the right to have dispatched to them, when available, the gangs in their opinion best qualified to do their work. Subject to the provisions of this Agreement, gangs and men not assigned to gangs shall be so dispatched as to equalize their work opportunities as nearly as practicable, having regard to their qualifications for the work they are required to do. The Employers shall be free to select their men within those eligible under the policies jointly determined and the men likewise shall be free to select their jobs.

* * *

10.4 When new methods of operation are introduced, the Employers shall discuss the proposed manning with the Union. If agreement cannot be reached at the coast level, the Employers shall have the right to put their manning in effect, subject to final resolution through the Agreement grievance machinery.

* * *

SECTION 11

NO STRIKES, LOCKOUTS AND WORK STOPPAGES

11.1 There shall be no strike, lockout or work stoppage for the life of this Agreement.

11.2 The Union or the Employer, as the case may be, shall be required to secure observance of this Agreement.

11.3 How work shall be carried on.

11.31 In the event grievances or disputes arise on the job, all men and gangs shall continue to work as directed by the employer in accordance with the specific provisions of the Agreement or if the matter is not covered by the Agreement, work shall be continued as directed by the employer.

11.32 There will be no unilateral "hip pocket" working or dispatching rules.

11.4 Exceptions for health and safety.

11.41 Longshoremen shall not be required to work when in good faith they believe that to do so is to immediately endanger health and safety. Only in cases of bona fide health and safety issues may a standby be justified. The Union pledges in good faith that health and safety will not be used as a gimmick. Supplement III sets forth the agreed procedure with respect to disputes on health and safety.

11.5 Picket lines.

11.51 Refusal to cross a legitimate and bona fide picket line, as defined in this paragraph, shall not be deemed a violation of this Agreement. Such a picket line is one established and maintained by a union, acting independently of the ILWU longshore locals, about the premises of an employer with whom it is engaged in a bona fide dispute over wages, hours or working conditions of employees, a majority of whom it represents as the collective bargaining agency. Collusive picket lines, jurisdictional picket lines, hot cargo picket lines, secondary boycott picket lines, and demonstration picket lines are not legitimate and bona fide picket lines within the meaning of this Agreement.

11.52 If an ILWU longshore local located within the confines of the United States whose members are not covered by this Agreement is engaged in a legitimate, bona fide, nonjurisdictional and noncollusive strike concerning wages, hours or working conditions of its members, no longshoreman under this Agreement shall be required to perform work hereunder respecting cargo that normally, without such strike, would be handled by members of such ILWU longshore local but which has been handled or is destined to be handled by other workers engaged in strike-breaking activities under established and legitimate trade union principles.

SECTION 13
NO DISCRIMINATION

13.1 There shall be no discrimination in connection with any action subject to the terms of this Agreement either in favor of or against any person because of membership or nonmembership in the Union, activity for or against the Union or absence thereof, or race, creed, color, national origin or religious or political beliefs.

SECTION 14
SLING LOAD LIMITS

* * *

14.2 In the case of all commodities other than those listed in 14.1 or on operations not subject to the limitations of 14.1, where operations have changed or where new commodities or operations have developed, loads shall be built and handled as directed by the employer, within safe and practical limits and without speed up of the individual. Any dispute arising with regard to such an operation shall be settled through the grievance machinery with work continuing as ordered by the employer.

14.21 An increase in the number of longshoremen manhandling cargo or the use of machinery to move or stow cargo on the dock or on the ship shall be considered a change in operations that permits the handling of loads larger than those specified in 14.1.

14.3 Loads shall be skimmed only as necessary to an operation and as ordered by the employer.

14.4 The Union shall have the right, without limitation, to raise a claim that an operation imposes an onerous workload on the individual worker and to carry such an issue through the grievance machinery as provided in accordance with Sections 11 and 17 of this Agreement.

SECTION 15
EFFICIENT OPERATIONS

15.1 There shall be no interference by the Union with the Employers' right to operate efficiently and to change methods of work and to utilize laborsaving devices and to direct the work through employer representatives while explicitly observing the provisions and conditions of the Agreement protecting the safety and welfare of the employees. "Speed-up" refers to an onerous workload on the individual worker; it shall not be construed to refer to increased production resulting from more efficient utilization and organization of the workforce, introduction of laborsaving devices, or removal of work restrictions.

15.11 In order to avoid disputes, the employer shall make every effort to discuss with the Union in advance the introduction of any major change in operations.

15.2 The employer shall not be required to hire unnecessary men. The number of men necessary shall be the number required to perform an operation in accordance with the provisions of 15.1, giving account to the contractual provisions for relief and the fact that during many operations all men will not be working at all times due to the cycle of the operation.

15.3 The Employers shall have the right to propose changes in working and dispatching rules that they claim are in conflict with the intent of provisions incorporated in this Agreement. The Joint Coast Labor Relations Committee may refer proposed changes that are of only local significance to the local level for negotiation. Any such change agreed to at the local level must be approved at the coast level before being put into operation. Any proposal referred to the local level and not resolved within thirty (30) days thereafter shall automatically return to the Joint Coast Labor Relations Committee.

15.4 Any disputes concerning the interpretation or application of provisions of this Agreement relating to the subject matter of this Section 15 may be submitted directly to the Joint Coast Labor Relations Committee.

SECTION 16
SAFETY

* * *

SECTION 17
JOINT LABOR RELATIONS COMMITTEES, ADMINISTRATION OF AGREEMENT AND GRIEVANCE PROCEDURES

17.1 Joint Labor Relations Committees.

17.11 The parties shall establish and maintain, during the life of this Agreement, a Joint Port Labor Relations Committee for each port affected by this Agreement, four Joint Area Labor Relations Committees, and a Joint Coast Labor Relations Committee. Each of said labor relations committees shall be comprised of three or more representatives designated by the Union and three or more representatives designated by the Employers. Each side of the committee shall have equal vote.

17.12 The duties of the Joint Port Labor Relations Committee shall be:

17.121 To maintain and operate the dispatching hall.

17.122 To exercise control of the registered lists of the port, as specified in 8.3.

17.123 To decide questions regarding rotation of gangs and extra men.

17.124 To investigate and adjudicate all grievances and disputes according to the procedure outlined in this Section 17.

17.125 To investigate and adjudicate any complaint against any longshoreman whose conduct on the job, or in the dispatching hall, causes disruption of normal harmony in the relationship

of the parties hereto or the frustration and/or violation of the provisions of the working or dispatching rules or of this Agreement. The application of this 17.125 shall not negate procedure for penalties as provided for in 17.7.

17.126 To carry out such other functions as are assigned to it herein or by the parties, directly or through the Joint Coast Labor Relations Committee.

17.13 There shall be a Joint Area Labor Relations Committee for each of the four port areas (Southern California, Northern California, Columbia River and Oregon Coast Ports, and Washington). Such Committee shall investigate and adjudicate grievances not settled at the local level. The Area Joint Labor Relations Committee step may be eliminated by agreement at the area level or may be bypassed by agreement at the port level.

17.14 The Joint Coast Labor Relations Committee shall function in the administration of this Agreement as provided herein and shall investigate and adjudicate grievances as provided herein.

17.141 All meetings of the Joint Coast Labor Relations Committee and all arbitration proceedings before the Coast Arbitrator shall be held in the City and County of San Francisco, State of California, unless the parties shall otherwise stipulate in writing.

17.15 The grievance procedure of this Agreement shall be the exclusive remedy with respect to any disputes arising between the Union or any person working under this Agreement or both, on the one hand, and the Association or any employer acting under this Agreement or both, on the other hand, and no other remedies shall be utilized by any person with respect to any dispute involving this Agreement until the grievance procedure has been exhausted.

17.16 Pending investigation and adjudication of such disputes work shall continue and be performed as provided in Section 11.

17.2 Grievances arising on the job shall be processed in accordance with the procedure hereof beginning with 17.21. Other grievances as to which there are no specific provisions herein shall be processed in accordance with the provisions hereof beginning with 17.23.

17.21 The gang steward and his immediate supervisor, where the grievance is confined to one gang, or any one steward who is a working member of an affected gang where the grievance involves more than one gang or a dock operation, shall take the grievance to the walking boss, or ship or dock foreman in immediate charge of the operation.

17.22 If the grievance is not settled as provided in 17.21, it shall be referred for determination to an official designated by the Union and to a representative designated by the Employer.

17.23 If the grievance is not settled in 17.21 and 17.22 or does not arise on the job, it shall be referred to the Joint Port Labor Relations Committee which shall have the power and duty to investigate and adjudicate it.

17.24 In the event that the Employer and Union members of any Joint Port Labor Relations Committee shall fail to agree upon any question before it, such question shall be immediately referred at the request of either party to the appropriate Joint Area Labor Relations Committee for decision.

17.25 In the event that the Employer and Union members of any Joint Area Labor Relations Committee fail to agree on any question before it, such question shall be immediately referred at the request of either party to the Area Arbitrator for hearing and decision, and the decision of the Area Arbitrator shall be final and conclusive except as otherwise provided in 17.26.

17.26 The Joint Coast Labor Relations Committee has jurisdiction to consider issues that are presented to it in accordance with this Agreement and shall exercise such jurisdiction where it is mandatory and may exercise it where such jurisdiction is dis-

cretionary as provided in 17.261, 17.262 and other provisions of this Agreement.

17.261 Any decision of a Joint Port or Joint Area Labor Relations Committee or of an Area Arbitrator claimed by either party to conflict with this Agreement shall immediately be referred at the request of such party to the Joint Coast Labor Relations Committee (and, if the Joint Coast Labor Relations Committee cannot agree, to the Coast Arbitrator, for review). The Joint Coast Labor Relations Committee, and if it cannot agree, the Coast Arbitrator, shall have the power and duty to set aside any such decision found to conflict with this Agreement and to finally and conclusively determine the dispute. It shall be the duty of the moving party in any case brought before the Coast Arbitrator under the provisions of this 17.261 to make a prima facie showing that the decision in question conflicts with this Agreement, and the Coast Arbitrator shall pass upon any objection to the sufficiency of such showing before ruling on the merits.

17.262 The Joint Coast Labor Relations Committee and the Coast Arbitrator shall have power to review decisions relative to the operation of dispatching halls, or the interpretation of port working and dispatching rules, or discharges, or pay (including travel pay and penalty rates), but shall exercise it in any case only if the Committee decides to review the specific case.

17.27 In the event that the Employer and Union members of the Joint Coast Labor Relations Committee fail to agree on any question before it, including a question as to whether the issue was properly before the Coast Labor Relations Committee, such question shall be immediately referred at the request of either party to the Coast Arbitrator for hearing and decision, and the decision of the Coast Arbitrator shall be final and conclusive.

17.28 Miscellaneous provisions.

17.281 Should either party fail to participate in any of the steps of the grievance machinery, the matter shall automatically move to the next higher level.

17.282 If the local grievance machinery becomes stalled or fails to work, the matter in dispute can be referred at once by either the Union or the Association to the Joint Coast Labor Relations Committee for disposition.

17.283 The hearing and investigation of grievances relating to discipline by return to the dispatching hall (17.7), penalties (17.8) and dispatching hall personnel (8.23) shall be given precedence over all other business before the Joint Port and Joint Area Labor Relations Committees and before the Area Arbitrator.

17.284 Nothing in this Section 17 shall prevent the parties from mutually agreeing upon other means of deciding matters upon which there has been disagreement.

17.3 Business Agents.

17.31 To aid in prompt settlement of grievances and to observe Agreement performance, it is agreed that Business Agents as Union representatives shall have access to ships and wharves of the employer to facilitate the work of the Business Agent, and in order that the employer may cooperate with the Business Agent in the settlement of disputes the Business Agent shall notify the representative designated by the employer before going on the job.

17.4 When any longshoreman (whether a registered longshoreman or an applicant for registration or a casual longshoreman) claims that he has been discriminated against in violation of Section 13 of this Agreement. he may at his option and expense, or either the Union or the Association may at its option and at their joint expense. have such complaint adjudicated hereunder, which procedure shall be the exclusive remedy for any such discrimination.

17.41 Such remedy shall be begun by the filing of a grievance with the Joint Port Labor Relations Committee setting forth the grievance and the facts as to the alleged discrimination. Such a grievance shall be timely if presented within ten (10) days of

the occurrence of the alleged discrimination. Such grievance shall be investigated by the Joint Port Labor Relations Committee at a regular or special meeting of the Committee at which the individual involved shall be permitted to appear to state his case, at which time he may present oral and written evidence and argument.

17.42 Either the Employers, the Union or the man involved may take an appeal from the decision of the Joint Port Labor Relations Committee. Such appeal shall be to the Joint Coast Labor Relations Committee by letter addressed to the Joint Coast Labor Relations Committee. To be timely, such appeal must be delivered or mailed within seven (7) days of the decision of the Joint Port Labor Relations Committee.

17.421 If such an appeal is taken within the time limits allowed, the Joint Coast Labor Relations Committee shall either confirm or reverse or modify the decision of the Joint Port Labor Relations Committee without any further hearing, or order a further hearing and thereupon issue its decision on the basis of the entire record including that at both hearings.

17.43 An appeal from the decision of the Joint Coast Labor Relations Committee can be presented to the Coast Arbitrator (or by agreement of the Joint Coast Labor Relations Committee to an Area Arbitrator) by the individual involved, the Employers, or the Union. Appeal shall be by a written request for an arbitrator's hearing mailed or delivered to the Union and the Employer representatives of the Joint Coast Labor Relations Committee if by an individual, or to the individual and the other party's representative on the Joint Coast Labor Relations Committe if by either the Union or the Employer. Such an appeal shall be timely only if such request for an arbitrator's hearing is so filed in writing with the Joint Coast Labor Relations Committee no later than seven (7) days after issuance of the decision of the Joint Coast Labor Relations Committee from which an appeal to an arbitrator is taken.

17.431 The arbitration procedure shall be carried on in accordance with the procedures generally applicable under this Agreement for arbitration before the Coast Arbitrator.

17.5 Arbitrators and awards.

17.51 The parties have an arbitrator for each of the said four port areas and a Coast Arbitrator. If any arbitrator shall at any time be unable or refuse or fail to act, the parties shall select his successor or substitute. If a vacancy occurs and the parties fail to agree on the successor or substitute, he shall be appointed at the request of either party by Mr. E. D. Conklin.

17.52 Powers of arbitrators shall be limited strictly to the application and interpretation of the Agreement as written. The arbitrators shall have jurisdiction to decide any and all disputes arising under the Agreement including cases dealing with the resumption or continuation of work.

17.53 Arbitrators' decisions must be based upon the showing of facts and their application under the specific provisions of the written Agreement and be expressly confined to, and extend only to, the particular issue in dispute. The arbitrators shall have power to pass upon any and all objections to their jurisdiction. If an arbitrator holds that a particular dispute does not arise under the Agreement, then such dispute shall be subject to arbitration only by mutual consent.

17.54 In the event the parties agree that an arbitrator has exceeded his authority and jurisdiction, he shall be disqualified for any further service.

17.55 All decisions of the arbitrators, except as provided in 17.261 and 17.6, shall be final and binding upon all parties. Decisions shall be in writing signed by the arbitrator and delivered to the respective parties.

17.56 All expense and salaries of the arbitrators shall be borne equally by the parties, except where specifically provided herein to the contrary.

17.6 Informal hearings and interim rulings.

17.61 When a grievance or dispute arises on the job and is not resolved through the steps of 17.21 and 17.22, and it is claimed that work is not being continued as required by Section 11, a request by either party shall refer the matter to the Area Arbitrator (or by agreement of the Joint Coast Labor Relations Committee to the Coast Arbitrator) for his consideration in an informal hearing; such referral may be prior to formal disagreement in any Joint Labor Relations Committee or upon failure to agree on the question in the Joint Area Labor Relations Committee. Such hearing may be ex parte if either party fails or refuses to participate, provided that the arbitrator may temporarily delay an ex parte hearing to permit immediate bona fide efforts to settle an issue without a hearing.

17.62 The arbitrator shall act with his powers limited strictly to the application and interpretation of the Agreement as written. The parties shall have the right to present such views as they wish to the arbitrator, but it shall not be necessary to have a shorthand or stenotype reporter present to report the proceedings nor shall employment of counsel be necessary. The arbitrator, on this basis, shall promptly issue an oral interim ruling with respect to the grievance or dispute and thereafter confirm it in writing. An interim ruling shall be binding on the parties regarding the particular issue on the particular ship on the particular occasion but shall not be a precedent for other cases. Any interim ruling shall be binding unless reversed by a contrary decision after a formal hearing.

17.63 If either party is dissatisfied with the interim ruling, the question shall be immediately referred at the request of such party to the arbitrator for hearing and decision in accordance with the normal procedure under 17.5 of this Agreement; the arbitrator shall then proceed as if there had been a failure to agree on the question by the Joint Area Labor Relations Committee, provided that the arbitrator may temporarily delay a hearing

to permit prompt bona fide efforts to settle the question in the Port or Area Joint Labor Relations Committee.

17.64 The use of the informal procedure leading to an interim ruling can be waived by consent of both parties with respect to any particular dispute or grievance. If at the beginning of the informal procedure either party establishes a good faith claim that an issue, other than a dispute with respect to Section 11, is of general significance or that the formal procedure will be necessary to settle such issue, the arbitrator shall rule that the informal procedure be bypassed regarding such issue. In the absence of such waiver or decision to bypass, the arbitrator shall hold an informal hearing and issue an interim ruling regarding the dispute in accordance with the procedure set forth above.

17.7 Discipline by return to the dispatching hall.

17.71 The employer shall have the right to return to the dispatching hall any man (or to send home any non-registered man) for incompetence, insubordination or failure to perform the work as required in conformance with the provisions of this Agreement.

17.72 Such longshoreman shall not be dispatched to such employer until his case shall have been heard and disposed of before the Joint Port Labor Relations Committee, and no other employer shall refuse employment to such longshoreman on the basis of such return to the dispatching hall.

17.73 If any man feels that he has been unjustly returned to the dispatching hall or dealt with, his grievance shall be taken up as provided in 17.2 beginning with 17.23.

17.74 In case of return to the dispatching hall without sufficient cause, the Joint Port Labor Relations Committee may order payment for lost time or reinstatement with or without payment for lost time.

17.75 When an employer returns a gang to the dispatching hall for cause, its gear priority terminates and such employer may carry on work at the hatch or gear involved without delay. The hatch or gear involved shall not stand idle because of any action

or nonaction of the Union or longshoremen or the dispatching hall. A replacement gang shall be dispatched promptly upon order of the employer. Until the replacement gang turns to or if one is not ordered or cannot be dispatched, any other gang employed by the employer shall shift to the hatch or gear involved as directed by the employer. The returned gang shall not be redispatched to the job involved unless it is the only available gang and the Association requests that it be dispatched. The provisions of 17.73 and 17.74 shall apply with respect to any gang returned to the dispatching hall for cause.

17.8 Penalties for work stoppages, assault, pilferage, drunkenness and other offenses.

17.81 All longshoremen shall perform their work conscientiously and with sobriety and with due regard to their own interests shall not disregard the interests of the employer. Any employee who is guilty of deliberate bad conduct in connection with his work as a longshoreman or through illegal stoppage of work shall cause the delay of any vessel shall be fined, suspended, or for deliberate repeated offense, cancelled from registration. Any employer may file with the Union a complaint against any member of the Union and the Union shall act thereon and notify the Joint Port Labor Relations Committee of its decision within fifteen (15) days from the date of receipt of the complaint. An employer shall not be required to appear nor need he participate in discipline by the Union of its members beyond the filing of complaints.

17.811 If within thirty (30) days thereafter the Employers are dissatisfied with the disciplinary action taken under 17.81, then the following independent procedure of 17.82 may be followed, which procedure shall also be applicable in the case of longshoremen not members of the Union.

17.82 The Joint Port Labor Relations Committee has the power and duty to impose penalties on longshoremen who are found guilty of stoppages of work, assault, refusal to work

cargo in accordance with the provisions of this Agreement, or who leave the job before relief is provided, or who are found guilty of pilfering or broaching cargo or of drunkenness or who in any other manner violate the provisions of this Agreement or any award or decision of an arbitrator.

17.821 Assault.

17.8211 For first offense assault: Minimum penalty, one year's suspension from work. Maximum penalty, discretionary.

17.8212 For second offense assault: Mandatory cancellation from registered list upon request of either party.

17.8213 In either case such conviction shall not be dependent upon the existence of a prior court decision, nor shall the determination of guilt await a court decision.

17.822 Pilferage.

17.8221 For first offense pilferage: Minimum penalty, 60 days' suspension from work. Maximum penalty, discretionary.

17.8222 For second offense pilferage: Mandatory cancellation from registered list upon request of the employer.

17.8223 Pilferage offenses committed prior to July 1, 1956 shall not be considered herein. The Joint Coast Labor Relations Committee shall review this date and is empowered to move it forward periodically.

17.823 Drunkenness or smoking in prohibited areas.

17.8231 First offense: suspension for 15 days.

17.8232 Second offense: suspension for 30 days.

17.8233 Succeeding offenses: Minimum penalty, 60 days' suspension; maximum penalty, discretionary.

17.824 Suspensions under the foregoing provisions shall follow convictions by either the Union grievance machinery or by the Joint Port Labor Relations Committee, either of whom shall accept a prior court decision. The court decision will be considered by the parties and they shall discount the penalties set forth above accordingly. Where a fine has been assessed then the days off on suspension shall be discounted at the rate of five dollars

($5.00) per day. Any man suspended under these provisions shall not be dispatched for work in any port covered by this Agreement until the suspension penalty has been served.

17.83 Any longshoremen having records of habitual drunkenness or whose conduct on the job or in the dispatching hall causes disruption of normal harmony in the relationship of the parties hereto, or who physically assault anyone in the dispatching hall or on the job, or who have records of working in a manner that endangers other workers shall not be dispatched to operate or used to operate any hoisting or mechanical equipment or devices or to supervise the operation of such equipment.

17.84 In the event of disagreement at the Joint Port Labor Relations Committee level as to the imposition of penalties under this 17.8, the issue shall be processed immediately through the grievance procedure, and to the Area Arbitrator, if necessary.

17.85 The rules and penalties provided hereinabove shall be applicable to fully registered longshoremen and, except where a more stringent rule or penalty is applicable pursuant to 17.851, to limited registered longshoremen and to nonregistered longshoremen.

17.851 More stringent rules and penalties than those provided hereinabove that are applicable to limited registered longshoremen or to nonregistered longshoremen or to both such groups may be adopted or modified by unanimous action of the Joint Coast Labor Relations Committee and, subject to the control of such Committee so exercised, more stringent rules and penalties applicable to limited registered men or nonregistered men or to both groups that are provided in existing and future local joint working, dispatching, and registration rules and procedures or by mutually agreed practices shall be applicable.

SECTION 18

GOOD FAITH GUARANTEE

18.1 As an explicit condition hereof, the parties are committed to observe this Agreement in good faith. The Union com-

mits the locals and every longshoreman it represents to observe this commitment without resort to gimmicks or subterfuge. The Employers give the same guarantee of good faith observance on their part.

SECTION 19
STEAM SCHOONERS

* * *

SECTION 20
TERM OF AGREEMENT AND ITEMS OPEN TO REVIEW DURING TERM OF AGREEMENT

20.1 This Agreement shall remain in effect—unless terminated in accordance with other provisions in the Agreement or unless the termination date is extended by mutual agreement—until July 1, 1966, and shall be deemed renewed thereafter from year to year unless either party gives written notice to the other of a desire to modify or terminate the same, said notice to be given at least sixty (60) days prior to the expiration date. Negotiations shall commence within ten (10) days after the giving of such notice.

20.2 Any item in this Agreement except Mechanization and Modernization and Pensions shall be subject to review on June 15, 1965, at the request of either party. Mechanization and Modernization and Pensions are reviewable as provided in the respective Supplementary Agreements.

20.21 The party desiring review shall give notice of the items to be reviewed not less than thirty (30) days prior to the review date. Negotiations shall take place during the first fifteen (15) days thereafter and any unresolved items shall be referred to the Coast Arbitrator, the award to be rendered by the review date. Any adjustment in the basic straight or overtime rates agreed to by the parties or an award rendered by the Coast Arbitrator shall become effective with the day shift on the Monday nearest the review date.

SECTION 21

WELFARE, PENSION, MECHANIZATION AND MODERNIZATION PLANS

21.1 The parties hereto have agreements on the subjects of Welfare, Pensions and on Mechanization and Modernization for longshoremen covered by this Agreement as set forth in the Second Amended ILWU-PMA Welfare Agreement and ILWU-PMA Welfare Fund—Declaration of Trust, the First Amended ILWU-PMA Pension Agreement and ILWU-PMA Pension Fund —Declaration of Trust, the ILWU-PMA Supplemental Agreement on Mechanization and Modernization and the Trust Indentures established under the ILWU-PMA Mechanization and Modernization Plan.

SECTION 22

MODIFICATION

22.1 No provision or term of this Agreement may be amended, modified, changed, altered or waived except by a written document executed by the parties hereto.

22.2 All joint working and dispatching rules shall remain in effect unless changed pursuant to Section 15. All other restrictions on the employer or longshoremen that are in conflict with the provisions of this Agreement are null and void.

22.3 The parties agree to meet for the purpose of codifying their agreement with respect to the subject matter covered in arbitrators' awards and rulings of the Joint Coast Labor Relations Committee. The parties will incorporate that agreement into the Pacific Coast Longshore Agreement at a time and in a manner to be agreed to by the parties.

EXHIBIT 2

March 18, 1958

MEMORANDUM
OF RULES COVERING REGISTRATION AND DE-REGISTRATION OF LONGSHOREMEN IN THE PORT OF SAN FRANCISCO

This is a memorandum of rules adopted and promulgated this ..... day of March, 1958, by the San Francisco Joint Port Labor Relations Committee pursuant to the authority set forth in Section 7(c)(1) of the Basic Pacific Coast Longshore Agreement, as amended through December, 1955. The parties acknowledge that the rules herein contained are intended by them to be in conformity and consistent with the provisions of the Basic Pacific Coast Longshore Agreement and the parties declare this to be their binding interpretation of the provisions of said Basic Agreement. The parties further acknowledge that the rules herein contained are intended by them to be an application of the pertinent provisions of the Basic Agreement to the problems and conditions peculiar to the Port of San Francisco and are not intended to establish any precedent with reference to practices followed or to be followed in any other port covered by said Basic Agreement.

§ 1. Seniority groups.

Longshoremen employed shall fall in the following categories:

A. Registered Longshoremen.

B. Limited Registration Longshoremen.

Other workers doing longshore work (Social Security men) are casuals and have no seniority rights or registration status.

§ 2. Fully Registered List.

(a) Men currently having full registration shall constitute the registered list (Class A). Where de-registration is necessary to

reduce the list, the last man added to the list shall be the first man off. Men so removed from the registered list shall have the right, within ten days of removal, to apply for positions at the top of the limited registration list and, if application is duly made, shall so be placed on such list without the application of the provisions of §§ 6 and 8. Such men who remain on the limited registration list shall have first call to return to the registered list, last man off the registered list, who is not de-registered from the limited registration list, shall be the first to return to said registered list and without following the provisions of § 3(b) or § 7(b).

(b) An approved leave of absence from the industry by the Joint Labor Relations Committee for not more than ninety days shall not affect a registered longshoreman's seniority; however where the leave (including any extensions) is for in excess of ninety days or is indefinite, no seniority shall accumulate except during the first ninety days of such leave. All leaves of absence shall be obtained from the Joint Labor Relations Committee and shall be granted upon request if good cause for granting such leave is shown after due consideration.

(c) Longshoremen who are fully registered in any port covered by the Basic Agreement who transfer to the Port of San Francisco with the approval of the Port Joint Labor Relations Committee shall be given credit for seniority accumulated in the prior port. Hereafter the amount of such seniority shall be fixed and approved when the transfer is approved by the Joint Labor Relations Committee. This shall determine the transferee's position on the Class A list for purposes of § 2(a), etc.

§ 3. Limited Registration List.

(a) A limited registration list (Class B) shall be jointly prepared by the parties.

(b) The limited registration list (Class B) shall be revised annually (or semi-annually if the Joint Labor Relations Committee

so determines) so that the names thereon are arranged in sequence on the basis of availability for all work dispatched as shown on the records of the San Francisco dispatch hall, the Joint Labor Relations Committee and the Central Pay Office for the preceding year. A man will be given credit for 100% availability in any week in which he was either signed in or was at work on 6 days and had no flops. Availability is willingness and availability to take any type of work at any time it is offered and regardless of the duration of the job.

(c) Any men added to the limited registration list as provided in § 2(a) hereof shall have seniority over those men referred to in § 3(a) hereof, and as set forth in § 2(a).

(d) The seniority of any men added to the limited registration list hereafter shall commence as of the date such names are added to said list.

§ 4. Casual Workers.

There shall be no list of casuals doing longshore work.

§ 5. Applications for registration.

The Joint Labor Relations Committee shall determine when applications for registration shall be accepted. Notice of the taking of applications for full (Class A) registration and for limited (Class B) registration shall be given in the Dispatch Hall and Pay Office and may also be in such other form as is determined by the Joint Labor Relations Committee.

§ 6. Joint Action on applications.

(a) Applications for registration and for limited registration must be approved by both parties. Consideration shall be given to each applicant's work history and all phases of his qualifications to do all the work of longshoremen.

(b) De-registration for cause from the limited registration list (Class B) or from the registration list (Class A) shall exclude a man from a place on either registration list.

(c) Neither membership or nonmembership in the union nor activity or nonactivity for or against the union, shall be a factor in considering applications for registration or in de-registration. No person shall be placed on the registered list or on the limited registration list except in accordance with these rules and unless he is fully qualified and competent to work as a longshoreman.

§ 7. Additions to list of Fully Registered Longshoremen.

(a) Additions to the registered list (Class A) shall be made solely on the basis of applications from the limited registration list (Class B). The men at the top of the limited registration list shall be given, in sequence, first opportunity to apply for full registration.

(b) Additions shall be made after notice, in the number and at the time fixed by the Joint Labor Relations Committee. Each application shall be reviewed on the basis of the standards set forth in § 6 above, with consideration of ability, efficiency, experience, regular availability and other relevant factors. A longshoreman on the limited registration list (Class B) will not be eligible to promote to the registration list (Class A) unless he becomes entitled to Benefits B under the Welfare Plan and the comprehensive physical examination available to him as one of said benefits shows that his physical condition is such that he is fully able to do all types of longshore work.

(c) The foregoing shall not prejudice any right given under or by virtue of Section 7(d)(1) of the Basic Longshore Agreement.

§ 8. Additions to the Limited Registration List.

(a) Additions to the limited registration list shall be made from time to time as determined by the Joint Labor Relations

Committee. Subject to the provisions of subsection (b) hereof, when such additions are made first preference shall be given to men who have had previous full longshoremen's registration in this port who were not de-registered for cause; second preference shall be given to men who have had partial or limited registration in this port who were not de-registered for cause.

(b) An applicant with previous registration in this port shall be entitled to such preference only if he had registered status on or after June 16, 1951 and if he voluntarily left longshore work (that is, by being de-registered on his own initiative while he had a record as a longshoreman regarding working average hours, etc., that was satisfactory to both parties) and then only if the period since his such de-registration is shorter than the period he was a registered longshoreman in this port. Credit for past experience shall be given only for time on the formal full registration list of longshoremen of this port.

(c) With respect to any application of one who claims a preference because of previous full or limited registration: The end of the applicant's period without registration for the purpose of the particular application shall be deemed to be the date of the receipt of the application for re-registration being considered by Joint Labor Relations Committee.

(d) Additions to the limited registration list (Class B) may be made under § 2(a).

(e) Other additions to the limited registration list (Class B) shall be made after notice in the number and at the time fixed by the Joint Labor Relations Committee. Each application shall be reviewed on the basis of the standards set forth in § 6 above and each applicant shall be evaluated on the basis of the procedure adopted by the Committee to amplify these basic rules covering registration and de-registration. including a pre-registration physical examination.

(f) Applicants shall be interviewed after notice by mail. Failure to appear as directed shall be considered a withdrawal of application. All decisions made after the interview and investigation shall be final.

(g) If the members of the Joint Port Labor Relations Committee fail to agree upon any application, such question shall be immediately referred at the request of either party to the Joint Area Labor Relations Committee for decision as an unresolved grievance subject to the procedure of Section 16 of the Basic Longshore Agreement.

§ 9. De-registration of Limited Registration (Class B) Longshoremen.

(a) A Class B longshoreman may be de-registered in accordance with the provisions of Section 16(f) of the Basic Longshore Agreement and, in addition, he may be de-registered for cause by the Joint Labor Relations Committee (in accordance with such rules or uniform procedures as may be established or followed by such Committee) if the Committee finds:

(i) That he has made any significant misstatement or misrepresentation in his application or interview.

(ii) That he has failed, without leave of absence or adequate reason or excuse, to register at the Dispatch Hall for a period of four consecutive weeks, such de-registration to be effective as of the beginning of such four week period.

(iii) That he has obtained and is engaged in other work or employment on a full time basis except with the approval or upon authorized leave of absence of the Joint Labor Relations Committee.

(iv) That over a period of three months or more he has had a poor work record as evidenced by frequent failures to sign-in, flops or other facts indicating that he has not made himself available for full time dispatch through the

Hall, except where he is on leave of absence for illness, disability or for other reason approved by the Joint Labor Relations Committee.

(v) That he has failed to make himself available for any work or shifts to which he may have been assigned by the Joint Labor Relations Committee.

(vi) That he is physically unable to do the work of a longshoreman, except where his disability has been incurred by industrial injury or disease occurring during the course of his employment as a longshoreman on the limited registration list.

(vii) That he fails to develop in respect to the abilities or knowledge requisite to the performance of longshore work and/or if he fails to participate in the longshore training program jointly established by the parties.

(viii) That he fails to participate where he is involved, in procedures established to provide contract compliance, or that he has violated any other contract provision for which registered longshoremen may be penalized and fails to submit to discipline or penalty regularly provided in the case of registered longshoremen.

(ix) That he has been working in a manner which endangers the safety of other longshoremen.

(x) That he failed to take a physical examination as required by the Joint Port Labor Relations Committee or failed to submit the full report thereof to the Joint Port Labor Relations Committee.

(xi) Or for any other cause; provided that neither membership or nonmembership in the union nor activity or nonactivity for or against the union, shall be a factor in considering applications for registration or in de-registration.

(b) Either party, if it shall have information indicating that a Class B longshoreman is subject to de-registration for cause,

may, at a regular meeting of the Joint Labor Relations Committee propose the de-registration of such Class B longshoreman and submit to the Committee any evidence in support thereof; if after consideration of the evidence submitted, the parties jointly concur in the proposal to de-register such Class B longshoreman, he shall be de-registered as of the last day on which he worked as a longshoreman; however, notice of such action taken shall be given by ordinary mail to the person so de-registered, and upon proper application in writing, having been made to the Joint Labor Relaions Committee by such person within fifteen (15) days after the mailing of such notice, said person so de-registered shall be given a hearing by said Joint Labor Relations Committee at which hearing he may submit evidence as to the facts considered by the Committee and others relevant to de-registration; in the event that the Joint Labor Relations Commitee, after such hearing shall be satisfied that the person de-registered has shown that he was de-registered contrary to the rules, because of material mistake of fact or otherwise, and there was no ground for his de-registration, it may by unanimous vote rescind such de-registration; otherwise said de-registration shall be effective as of the date on which such de-registered person last worked as a longshoreman. Such notice of de-registration shall be by letter in substantially the following form:

Dear Sir:

You are hereby notified that on the ..... day of ....., 19....., at a regular meeting of the Joint Labor Relations Committee, by unanimous vote, you were de-registered for cause as a Class B longshoreman, pursuant to the provisions of § 9 of the "Memorandum of Rules Covering Registration and De-registration of Longshoremen in the Port of San Francisco". Such de-registration was based upon the determination of the Committee that

you have violated the applicable rules, and particularly that you have .....(here give particulars).....

In the event that the Joint Labor Relations Committee receives within fifteen (15) days after the date of this letter, a detailed written statement signed by you, satisfactorily demonstrating that the foregoing statement of facts is erroneous and that there is no ground for your de-registration, and requesting a hearing, you will be given a hearing, at which you may show cause, if any you have, why such de-registration should be rescinded.

Pending such a hearing or in the event no further action is taken by you, you are and have been de-registered as a Class B longshoreman as of the ..... day of ....., 19..... and are not and will not further be entitled to the rights and privileges of such Class B registration.

Very truly yours,

JOINT LABOR RELATIONS COMMITTEE

By .....

By .....

(c) Limited registration (Class B) longshoremen may be de-registered if the Joint Labor Relations Committee determines the list is too long for the amount of work available. De-registration shall be from the bottom of the list after all men who have given cause for de-registration are dropped.

JOINT PORT LABOR RELATIONS COMMITTEE

EXHIBIT 428

SAN FRANCISCO JOINT PORT LABOR RELATIONS COMMITTEE

April 1, 1958

LETTER OF INSTRUCTIONS

Attached is the application form you requested for applying for Class "B" limited registration as a longshoreman in the port of San Francisco.

All applications are issued and will be received and processed in accordance with the provisions of the rules covering registration and deregistration of longshoremen in the Port of San Francisco, to implement the Basic Pacific Coast Longshore Agreement between International Longshoremen's and Warehousemen's Union and the Pacific Maritime Association.

You have been sent *two* forms, each containing your name and address, and *both* of these forms must be returned to San Francisco Joint Port Labor Relations Committee, P. O. Box 2298, San Francisco 26, to be received *no later than April 30, 1958.* Applications not received by that date will not be considered.

Before filling out the application, read the box at the end carefully. It states the conditions under which your application will be received.

After completing the form, sign both copies. *Six cents* (6¢) postage is required on the envelope in which you return to us the two completed copies.

An application will be considered only if:

1. It is returned in duplicate in time.
2. It is completely filled out and signed.
3. You agree to meet the requirements in the enclosed box at the end of the application, above your signature.

A post-card indicating your application has been received will be sent you if it arrives before the closing date stated above.

All persons given final consideration for registration will be required to appear in person for an interview at the time and place set by the Committee. Notice of such interview, time and place will be mailed to each individual applicant under final consideration.

Other applicants will receive no notice from the Committee. Failure to hear from the Committee on or before July 30, 1958 should mean you are turned down at this time.

SAN FRANCISCO JOINT PORT LABOR
RELATIONS COMMITTEE

EXHIBIT F

SAN FRANCISCO JOINT PORT LABOR RELATIONS COMMITTEE

P. O. BOX 2298 • SAN FRANCISCO 26, CALIFORNIA

APPLICATION FOR LIMITED CLASS "B" REGISTRATION AS A LONGSHOREMAN

* * *

PREVIOUS REGISTRATION OR EMPLOYMENT STATUS IN THE LONGSHORE INDUSTRY

* * * [1]

HEALTH AND PHYSICAL CONDITION

* * * [2]

AVAILABILITY AND DESIRE FOR FULL TIME EMPLOYMENT AS A LONGSHOREMAN

* * * [3]

RECORD

EMPLOYMENT RECORD *Give Complete History of Employment in the following spaces:*

* * *

UNION RECORD, IF ANY *Give complete history of Union affiliations, if any, in the following spaces:*

* * * [4]

PERSONAL DATA

* * *

EDUCATIONAL DATA

* * * [5]

REFERENCES

* * *

I, ... understand that my application is received under the following conditions to which I agree:

1. By receiving this application, the Joint Port Labor Relations Committee does not assume, agree, or undertake to accord me any registration or employment whatsoever.

2. Failure to appear on request for interview or to answer any and all questions in this form and those which I may be asked by the Joint Port Labor Relations Committee or any misstatements or misrepresentations may be cause for disqualification or deregistration.

3. The Joint Port Labor Relations Committee does not assume, agree or undertake to notify me of its action, if any, unless my application for Limited Class "B" registration is granted. Failure to notify me of my selection within ninety (90) days after the filing of the application shall be deemed to be adequate notice that my application has not been granted. * * *

4. Class "B" registration, if granted, shall be subject to agreements between the PMA and ILWU, or their successors, and to rules with respect to registration and deregistration established by said parties; I understand that registered longshoremen may be deregistered and that registration may be revoked in accordance with such agreements and such rules now in effect or hereafter to be agreed upon or adopted by the Association and the Union or their successors or by the Joint Port Labor Relations Committee.

5. * * *

.....

Signature of Applicant

.....

Date application signed

* * * [6]

EXHIBIT CL

LONGSHORE LABOR RELATIONS COMMITTEE
OF SAN FRANCISCO

St. Clair Building
16 California Street

Dispatching Hall
Bulkhead
Piers 16-18

San Francisco 11, Calif.
February 25, 1959

Dear Sir:

You are being given further consideration as an applicant for registration as a Class "B" longshoreman in the port of San Francisco, and you are hereby requested to report for an interview with this Committee, in accordance with the procedure governing Class "B" registration rules and regulations, on ..... at Room A 26—ground floor of Ferry Bldg. (south wing).

You are required to bring with you at that time your Social Security card; also your birth certificate, military discharge, if any, or in lieu thereof, suitable evidence that will be satisfactory to the Committee as to your date of birth. If a naturalized citizen, bring your naturalization papers. If an alien, bring your alien registration papers.

If you are successful in passing the interview, you will next be required to take a thorough physical examination. The cost of the physical examination will be borne by the Joint Labor Relations Committee. If you are accepted for registration, you will be required to pay initially a registration fee of $8.00 to cover a portion of the other costs of registration, payable prior to registration,

and will be required to pay another $8.00 after 60 days following registration as a condition to retaining your registration and as a further payment toward the other costs of the registration procedure.

If you are registered and make the two payments of your registration fee, your registration will nevertheless be subject to termination, revocation or other action by the Joint Labor Relations Committee.*

As a matter of courtesy, we would ask you to advise this Committee if you do not expect to be present at the time designated for oral examination, or if you know that you cannot pass a rigid and thorough physical examination.

We wish to further advise you that should you fail to appear at the time and place designated for your interview, or at the time and place designated for your physical examination, you will be automatically disqualified and stricken from the list as far as further consideration for registration is concerned.

Very truly yours,
J. R. Snyder
Secretary

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*A registered man, if he is not a union member, is required under the contract to pay to the union toward the support of the dispatching hall a sum equal to the prorata share of the expense of support of the hall paid by each member of the union. Failure to make such payments or to abide by other provisions in the contract, working rules or determinations of the Joint Labor Relations Committee can be cause for suspension or loss of registration.

EXHIBIT CF

LONGSHORE LABOR RELATIONS COMMITTEE
OF SAN FRANCISCO

St. Clair Building
16 California Street

Dispatching Hall
400 North Point St.

San Francisco 11, Calif.
July 30, 1959.

To San Francisco Class "B" Longshoremen:

In addition to the rules and regulations set forth in the enclosed Longshore Labor Relations Committee minutes of Meeting No. 29-A of June 17, 1959, which are particularly applicable to Class "B" men, we wish to further call your special attention to the provisions governing de-registration of Class "B" men in the "Memorandum of Rules Covering Registration and De-Registration of Longshoremen in the Port of San Francisco", dated March 18, 1958.

Following is an excerpt of Section 9 of the above Agreement covering other provisions of de-registration:

"9. *De-registration of Limited Registration (Class B) Longshoremen.*

(a) A Class B longshoreman may be de-registered in accordance with the provisions of Section 16(f) of the Basic Longshore Agreement and, in addition, he may be de-registered for cause by the Joint Labor Relations Committee (in accordance with such rules or uniform procedures as may be established or followed by such Committee) if the Committee finds:

(i) That he has made any significant misstatement or misrepresentation in his application or interview.

(ii) That he has failed, without leave of absence or adequate reason or excuse, to register at the Dispatch Hall for a period of four consecutive weeks, such de-registration to be effective as of the beginning of such four week period.

(iii) That he has obtained and is engaged in other work or employment on a full time basis except with the approval or upon authorized leave of absence of the Joint Labor Relations Committee.

(iv) That over a period of three months or more he has had a poor work record as evidenced by frequent failures to sign-in, flops or other facts indicating that he has not made himself available for full time dispatch through the Hall, except where he is on leave of absence for illness, disability or for other reason approved by the Joint Labor Relations Committee.

(v) That he has failed to make himself available for any work or shifts to which he may have been assigned by the Joint Labor Relations Committee.

(vi) That he is physically unable to do the work of a longshoreman, except where his disability has been incurred by industrial injury or disease occurring during the course of his employment as a longshoreman on the limited registration list.

(vii) That he fails to develop in respect to the abilities or knowledge requisite to the performance of longshore work and/or if he fails to participate in the longshore training program jointly established by the parties.

(viii) That he fails to participate where he is involved, in procedures established to provide contract compliance, or that he has violated any other contract provision for which registered longshoremen may be penalized and fails to sub-

mit to discipline or penalty regularly provided in the case of registered longshoremen.

(ix) That he has been working in a manner which endangers the safety of other longshoremen.

(x) That he failed to take a physical examination as required by the Joint Port Labor Relations Committee or failed to submit the full report thereof to the Joint Port Labor Relations Committee.

(xi) Or for any other cause; provided that neither membership or nonmembership in the union nor activity or nonactivity for or against the union, shall be a factor in considering applications for registration or in de-registration. - - - -".

J. R. Snyder,
Secretary
Meeting No. 29-A—1959

MINUTES OF SPECIAL MEETING OF THE LONGSHORE LABOR RELATIONS COMMITTEE OF SAN FRANCISCO

JUNE 17, 1959

Committee met at 2:00 P.M. at 16 California Street.

Present:

For Employers	*For ILWU Local 10*
J. R. Snyder, Secty.	W. Chester
J. Trupp	C. Hoffman
J. Edwards	G. Pickering
	R. Rohatch

This was a meeting of the special Labor Relations Committee working on the Class "B" registration.

Committee discussed the dispatching rules governing Class "B" men and felt that certain rules should be clarified to the men as follows:

1. Class "B" men are not permitted to volunteer or to choose jobs, but must take the jobs handed or assigned to them at the dispatching windows.
2. Men who refuse or flop jobs or fail to show on the job, cannot work on the same day or night shift for which they refused or flopped, and must add 6 hours to their accumulated low-man-out sign-in hours.
3. Class "B" men must work or be available 70% of each 30-day period.
   (a) Class "B" men must appear before the Longshore Labor Relations Committee to obtain leaves of absence for periods of time exceeding two weeks.
4. If a man is dispatched in error, or there is an over-dispatch of men to a job, such men will sign in at the same hours on which they were originally dispatched, providing they did not receive other work or pay on that shift. (Class "B" dispatch slips will not be signed or ok'ed for another job for the following shift.)

Disciplinary Action for Class "B" Men

The following rules apply to Class "B" men:

1. *Guilty of pilferage:* Automatic deregistration
2. *Guilty of smoking on the job in unauthorized places:* Same penalties as Class "A"
3. *Guilty of intoxication:* First offense—30 days
   Second offense—Mandatory de-registration
4. *Guilty of assault or battery, or doing bodily harm:* Automatic suspension and de-registration
5. Misconduct in the Hall or refusal to work as directed; refusal to take orders; leaving the job without authoriza-

tion; creating disturbances; fighting or assault; or general improper attitude, including arriving late on the job or leaving the job early:

Severe disciplinary action, depending on severity of offense and number of previous offenses, by the Labor Relations Committee. Such action to count against the individual when consideration is given to promotion to Class "A" registration.

6. *Failure to show on the job or replace himself:*

   Two weeks suspension (first offense).

7. No work or availability for 30 days without bona fide leave of absence:

   Automatic de-registration.

Instructions to the Chief Dispatcher:

1. A daily record of individuals who refuse a job or flop is to be kept for the Labor Relations Committee.
2. When "B" men are needed on nights they shall be taken in groups starting at the top of the list. The number to be established by the LRC. The men to be rotated every 30 days.
3. The Chief Dispatcher shall keep a record of the men who show an improper attitude or misbehavior to the dispatchers; such record to be passed on to the Labor Relations Committee.
4. Dispatchers are instructed to follow all LRC rules of dispatch regarding Class "B" men.

Meeting adjourned at 4:30 P.M.
Approved July 2, 1959.

/s/ George Pickering /s/ J. R. Snyder

EXHIBIT P

MEMORANDUM OF UNDERSTANDING
Between
PACIFIC MARITIME ASSOCIATION
(on behalf of its Members)
And
INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION
(on behalf of itself and all Longshore and Marine Clerks Locals in California, Oregon and Washington)

The following statements cover those items agreed to by the parties in the 1959 negotiations as amendments to the 1958 ILWU-PMA contracts, which contracts are reexecuted, except as modified hereby:

WAGES

* * *

MECHANIZATION

Mechanization and the utilization of laborsaving devices have been a subject of discussion between the parties since 1957. During the course of the 1959 negotiations the following items were agreed to on this subject.

To allow a certain amount of time (not more than one year) for the parties to further study and gain factual experience:

(1) of actual changes made by laborsaving machinery, changed methods of operation, or proposed changes in working rules and contract restrictions, resulting in reduced manpower or manhours with the same or greater productivity for an operation;

(2) of savings to the employer because of such changes;

(3) of a proper share of such savings to be funded as hereinafter provided; and

(4) of the manner of distributing such fund to the fully registered work force:

A) PMA proposes to create a coastwise fund for the fully registered work force, through contributions by the Employers to be accumulated during the first ensuing contract year, in the amount of one million five hundred thousand dollars. This amount, in addition to "buying time" for necessary study and experience, represents a recognition by the Employers that savings accrue as a result of mechanization and changed methods of operation, and a recognition by the Union that no additional payment is due for changes made or to be made prior to June 15, 1960. This payment shall constitute a part of the consideration for renewal of the contract, and shall be distributed to the fully registered work force in a manner to be determined. (Tax and legal problems to be resolved.)

B) It is the purpose and intent of the parties, during the course and as the result of this study period, to achieve and meet the following aims and objectives:

1. To guarantee the fully registered work force a share in the savings effected by labor saving machinery, changed methods of operation, or changes in working rules and contract restrictions resulting in reduced manpower or manhours with the same or greater productivity for an operation.

2. To maintain the 1958 fully registered work force, with allowance for normal attrition.

3. To create a coastwide fund for that work force through contributions by the Employers, such contributions to come from savings described in paragraph B) 1. hereof.

4. To provide that this fund will be separate from contractual wages, pensions, welfare and vacations.

5. To guarantee the PMA the right to make changes, and remove restrictions along with protection against reprisals for making such changes, and enforcement under the contract of such changes if and when made.

During the ensuing year, in addition to making such study, the following agreements shall be in effect:

a. PMA will accumulate the one million five hundred thousand dollar fund as provided in A) hereof.

b. PMA shall be free to make such changes as are deemed necessary under Section 14 of the present Longshore contract, and Section 25 of the present Clerks' contract, restricted however by the observance of rules prohibiting individual speed-up and unsafe operations. The load agreement shall continue.

Except for changes in operations made hereafter by introducing laborsaving devices in addition to those already used and practiced by him in the past, the Employer shall not invoke the provisions of Section 14 of the Longshore Agreement or Section 25 of the Clerks' Master Agreement during the ensuing year. Nor shall the Employer seek a reduction of gang sizes or number of Clerks, elimination of multiple handling, or other existing contract or working rule restrictions with relation to operations now existing, except during future annual review negotiations or by mutual agreement.

c. The parties will continue negotiations on the matters outlined in this proposal for a period of not to exceed one year for the purpose of determining a basis for converting the above fund and Employer contributions thereto to a continuing basis which will meet the aims and objectives set forth herein. Such negotiations shall not exclude tonnage taxes, manhour assessments, or

any other basis of conversion, nor exclude conversion of present contributions for welfare, pensions and vacations.

d. The parties shall continue to operate in accordance with the terms of the contract and working rules, with mutual agreement against reprisals and for enforcement of the contracts, working rules and the provisions of this agreement.

8-HOUR GUARANTEE

* * *

D. MANEUVERABILITY AND FLEXIBILITY OF THE WORK FORCE

1. In order to prevent as much as possible Employers being required to pay for "dead time" or time not worked by the application of the 8-hour guarantee, the Employers shall have maximum maneuverability and flexibility of the work force, Longshore and Clerks. They may shift men and gangs—from ship to ship, from direct employer to direct employer, from steamship company to steamship company or any combination thereof.

* * *

(i) The shifting of registered and limited registered men to fulfill the guarantee shall be carried out without bumping other men to create available work.

* * *

E. RULES AND EXAMPLES APPLICABLE TO SHIFTING MEN AND/OR GANGS

* * *

NEW EQUIPMENT

It is recognized that the Employer has the right to select competent men for all operations. When new types of equipment are introduced in connection with cargo handling covered by the contractual definitions of work, such new equipment shall be operated by employees under the ILWU contracts, with the understanding

that competent men shall be made available by the ILWU, with adequate experience or training. This proposal shall not change the status quo as to assignment of other than ILWU workers on existing equipment.

VACATIONS

* * *

WELFARE

* * *

PENALTY CARGOES

* * *

PROTECTIVE CLOTHING AND DEVICES

* * *

RELIEF PERIODS

It is recognized that employees are entitled to reasonable and necessary time off for relief. Relief periods shall be arranged so as to fall around the mid-point of the work period involved, having due regard for the continuity and nature of the work. The ILWU agrees there shall be specific contract language to prevent the abuse of such relief periods or their being used as a subterfuge to operate as a 4-on—4-gone practice, or variations thereof, and to insure that men will observe specified times for starting, resuming and finishing work.

PORT WORKING AND DISPATCHING RULES AND LOCAL AGREEMENTS

It was agreed, with regard to port working and dispatching rules that:

1) Any rules which conflict with or prevent the operation of the new contract provisions shall be changed.

* * *

LEGAL QUALIFICATIONS

* * *

GOOD FAITH GUARANTEE

As an explicit condition of agreement, the parties exchanged commitments that the Agreement as amended will be observed in good faith. In answer to the Employers' demand for such a guarantee, the Union Negotiating Committee and Caucus unanimously voted to commit every local and every member to observe such commitment without resort to gimmicks or subterfuge. The Employers gave a similar guarantee of good faith observance on their part.

In order to implement this good faith guarantee, it was agreed that whenever the local grievance machinery becomes stalled or fails to work the matter can be referred at once by either party to the Coast Labor Relations Committee for disposition. This understanding applies with special force to issues arising with regard to mechanization under Section 14 of the Coast Agreement and Section 25 of the Clerks' Agreement, and to the application of the 8-hour guarantee. Any problems arising over changes in local working or dispatching rules because of the new contract provisions can be thus referred to the Coast level for prompt disposition.

LENGTH OF CONTRACT

The contract shall be for a period of three years, terminating June 15, 1962, with an opening on wages, mechanization and hours in June, 1960; and an opening the second year, June, 1961, on wages, hours, mechanization and paid holidays. If settlement is not reached by negotiations, either party may submit unresolved issues to the Coast Arbitrator.

(The Union has agreed without commitment on either side that there shall be discussions regarding the problems of domestic carriers.)

Dated: August 10, 1959

PACIFIC MARITIME ASSOCIATION
on behalf of its members

/s/ J. Paul St. Sure

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION
on behalf of itself and all Longshore and Marine Clerks Locals in California, Oregon and Washington

/s/ L. B. Thomas

EXHIBIT Q

MEMORANDUM OF AGREEMENT
On
MECHANIZATION AND MODERNIZATION

October 18, 1960

A. PROVISIONS FOR EFFICIENT OPERATIONS

1. (1) The Longshore and Clerk's Agreements and local agreements (exclusive of Walking Boss Agreements) shall be revised and amended in the manner set forth herein so as to eliminate restrictions in the contract and working rules, as well as in unwritten but existing Union unilateral restrictions and arbitration awards which interfere with the Employers' rights dealing with sling loads, first place of rest, multiple handling, gang sizes, and manning scales, so as to allow the Employers to:

a. Operate efficiently
b. Change methods of work
c. Utilize labor-saving devices
d. Direct the work through Employer representatives while explicitly observing the provisions and conditions of the Agreements protecting the safety and welfare of the employees and avoiding speed up. "Speed up" shall be understood to refer to an onerous workload on the individual worker. It shall not be construed to refer to increased production resulting from more efficient utilization and organization of the work force, introduction of labor-saving devices, or removal of work restrictions.

2. (2) It is the intent of this document that the contract, working and dispatching rules shall not be construed so as to require the hiring of unnecessary men. The question of whether or not men are necessary shall be based on a determination of

the number of men required to perform an operation in accordance with the provisions of paragraph A (1). Such determination shall take into account the contractual provisions for relief, the fact that during many operations all men will not be working at all times due to the cycle of the operation, but this shall not be construed to sanction such practices as four-on four-off or variations thereof.

3. The Employer may seek through the provisions of the contract machinery to change only those contract provisions, working and dispatching rules which are in conflict with the provisions and intent of this document. Where changes are agreed upon at the Coast Committee level they shall go into effect. Where changes remain in dispute they shall be resolved by the contract machinery.

SLING LOAD LIMITS

* * *

PLACE OF REST AND MULTIPLE HANDLING

* * *

GANG SIZES AND MANNING

* * *

B. MODERNIZATION AND IMPROVEMENT FUND PROVISIONS

38. In return for a revised Longshore and Clerks' Agreement incorporating the provisions set forth in Paragraphs A and C "PROVISIONS FOR EFFICIENT OPERATIONS", PMA will establish a jointly trusteed Fund as hereinafter provided. The administration and application of these revisions of the contract shall be subject to the grievance procedure at the Coast level.

39. 1. The Fund shall include the $1.5 million accumulated prior to June 15, 1960, and will be supplemented by PMA contri-

butions of $5,000,000 per year for a period of five and one-half years. If at any time the maximum payments per year do not provide sufficient money to meet fully the guarantees and benefits, the guarantees and benefits shall be reduced proportionately.

40. 2. The Fund shall be segregated into two parts and used for the following purposes:

41. (a) For all present fully registered longshoremen and Clerks, minus attrition; a guarantee of payment for a specified number of hours of straight-time pay per week at the then current contract rate, computed on an annual basis. Such guarantee shall become operative only when hours fall below the agreed level due to reduced work opportunity resulting from changes as provided in Paragraph A hereof, but shall not apply to a drop in tonnage due to a decline in economic activity. Details of eligibility and administration to be negotiated.

42. (b) For all present fully resgistered longshoremen and Clerks, minus attrition; the types of benefits provided in Union Draft of 10/4/60 Paragraph (2) (b), Paragraphs (1) to (7) inclusive. The amounts of such benefits to be determined by the Union. (See Exhibit "A", attached.)

43. In regard to the benefit entitled "Mandatory Pensioning" PMA-ILWU shall have joint control over application of early mandatory retirement. If the parties disagree, differences will be subject to arbitration.

C. GENERAL PROVISIONS

* * *

D. DURATION

55. This Agreement shall become effective upon ratification by both parties and shall run to July 1, 1966.

E. AMENDMENTS TO BASIC LONGSHORE AND CLERKS AGREEMENTS

* * *

EXHIBIT OA

SUPPLEMENT TO PACIFIC MARITIME ASSOCIATION AND INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION AGREEMENTS

This SUPPLEMENT to all agreements by and between Pacific Maritime Association (hereinafter called "the Association") on behalf of its members and the International Longshoremen's and Warehousemen's Union (hereinafter called "the Union"), on behalf of itself and each and all of its longshore locals in California, Oregon and Washington and each and all of its other locals having agreements with the Association or representing employes working under such agreements and all employes performing work in the scope, terms and conditions of the several agreements,

WITNESSETH:

WHEREAS, the Association and the Union have agreed on the desirability of supplemental provisions with respect to their policy of no discrimination being incorporated in all agreements between the Association and the Union.

NOW, THEREFORE, the Association and the Union agree that each of the said agreements between the Association and the Union shall be, and hereby is, supplemented to include the following provisions and that the following provisions shall be in full force and effect as a part of each of the said agreements upon the execution of this supplement:

1. (§ 13.1) There shall be no discrimination in connection with any action subject to the terms of this Agreement either in favor of or against any person because of membership or non-

membership in the Union, activity for or against the Union or absence thereof, or race, creed, color, national origin or religious or political beliefs.

2. (§ 17.4) When any employe (whether a registered employe or an applicant for registration or a casual employe) claims that he has been discriminated against in violation of Section (13) of this Agreement, he may at his option and expense, or either the Union or the Association may at its option and at their joint expense, have such complaint adjudicated hereunder, which procedure shall be the exclusive remedy for any such discrimination.

3. (§ 17.41) Such remedy shall be begun by the filing of a grievance with the Joint Port Labor Relations Committee* setting forth the grievance and the facts as to the alleged discrimination. Such a grievance shall be timely if presented within ten (10) days of the occurrence of the alleged discrimination. Such grievance shall be investigated by the Joint Port Labor Relations Committee at a regular or special meeting of the Committee at which the individual involved shall be permitted to appear to state his case, at which time he may present oral and written evidence and argument.

4. (§ 17.42) Either the Employers, the Union or the man involved may take an appeal from the decision of the Joint Port Labor Relations Committee. Such appeal shall be to the Joint Coast Labor Relations Committee by letter addressed to the Joint Coast Labor Relations Committee. To be timely, such appeal must be delivered or mailed within seven (7) days of the decision of the Joint Port Labor Relations Committee.**

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*or the Joint Labor Relations Committee if the grievance machinery does not provide for a Joint Port Labor Relations Committee.

**Add where the particular grievance clause makes no provision for a Coast Labor Relations Committee:
(The Joint Coast Labor Relations Committee under the Pacific Coast Longshore Agreement is granted jurisdiction by the parties to hear appeals under this section of this agreement.)

5. (§ 17.421) If such an appeal is taken within the time limits allowed, the Joint Coast Labor Relations Committee shall either confirm or reverse or modify the decision of the Joint Port Labor Relations Committee without any further hearing, or order a further hearing and thereupon issue its decision on the basis of the entire record including that at both hearings.

6. (§17.43) An appeal from the decision of the Joint Coast Labor Relations Committee can be presented to the Coast Arbitrator—(or by agreement of the Joint Coast Labor Relations Committee to an Area Arbitrator)—by the individual involved, the Employers, or the Union. Appeal shall be by a written request for an arbitrator's hearing mailed or delivered to the Union and the Employer representatives of the Joint Coast Labor Relations Committee if by an individual, or to the individual and the other party's representative on the Joint Coast Labor Relations Committee if by either the Union or the Employer. Such an appeal shall be timely only if such request for an arbitrator's hearing is so filed in writing with the Joint Coast Labor Relations Committee no later than seven (7) days after issuance of the decision of the Joint Coast Labor Relations Committee from which an appeal to an arbitrator is taken.

7. (§ 17.431) The arbitration procedure shall be carried on in accordance with the procedures generally applicable under this Agreement for arbitration before the Coast Arbitrator*.

8. (§ 17.15) The grievance procedure of this Agreement shall be the exclusive remedy with respect to any disputes arising between the Union or any person working under this Agreement or both, on the one hand, and the Association or any employer acting under this Agreement or both, on the other hand, and no other remedies shall be utilized by any person

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*Where the footnote on p. 3 applies, add: "the Pacific Coast Longshore Agreement."

with respect to any dispute involving this Agreement until the grievance procedure has been exhausted.

9. (§ 17.411) With respect to any claim of violation of Section (13) of the Agreement between the Association and the Union that is alleged to occur on or after the date of execution of this supplement, the Joint Port Labor Relations Committee shall extend the time for filing of such claim beyond the time established in Section (17.41) of this Agreement whenever such extension is necessary because the period of limitation otherwise applicable is determined to be unlawful or because in the judgment of the Committee in the exercise of its sound discretion, such an extension is otherwise necessary to prevent inequity but in no event shall the time for filing of such claims be extended beyond six (6) months from the date of the occurrence of the alleged discrimination.

10. (§ 17.412) At any time before six (6) months after the date of the execution of this supplement, any claim of violation of Section (13) of this Agreement that is alleged to have occurred prior to the date of execution of this supplement and that is not already barred by laches or any other lawful and applicable limitation provision as of the date of execution of this supplement, may be filed in accordance with the procedures set forth in Section (17.15) and Sections (17.4 through 17.431) of the agreements between the Association and the Union, and the limitation period for the filing of such claims is hereby extended to six (6) months from the date of the execution of this supplement.

11. (§ 17.263) When either the Union or the Association claims that there has been a violation of Section (13) by anyone bound by this Agreement, the grievance shall be submitted to the Joint Coast Labor Relations Committee* and shall be resolved

*Add "under the Pacific Coast Longshore Agreement" where the particular grievance machinery makes no provision for a Coast Labor Relations Committee.

there or referred to the Coast Arbitrator for hearing and decision in accordance with the applicable contract provisions.

Dated: January 31, 1963

PACIFIC MARITIME ASSOCIATION
/s/ B. H. GOODENOUGH

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION
/s/ HARRY BRIDGES

EXHIBIT E

NOTICE TO ALL EMPLOYES WORKING UNDER ILWU-PMA CONTRACTS

The ILWU and the PMA contracts all include language that effectively states that any discrimination (as to race, creed, color, national origin, religious or political beliefs or union membership or activity or the lack thereof) is in violation of the collective bargaining contract. All longshoremen, clerks and all other employes represented by the ILWU in contracts with the Pacific Maritime Association (including casuals and applicants for registration) have full advantage of this nondiscrimination clause. Furthermore, the grievance machinery provides a remedy available to all such persons. This is the exclusive remedy for any claims of violation of the contract prohibition against discrimination. Any live claim of such discrimination in violation of the agreement in the past may be filed at any time before July 31, 1963, and such grievance will be deemed to be timely. In the ordinary course in the future, any such claim of discrimination must be filed within ten (10) days of the occurrence. In certain cases the committee handling the grievance will have authority to extend the period for filing such a grievance (up to a maximum period of six (6) months) if it is necessary to protect the employe from any unlawful or inequitable application of the standard period of limitations provided in the contract.

Dated: January 31, 1963

PACIFIC MARITIME ASSOCIATION
J. PAUL ST.SURE

INTERNATIONAL LONGSHOREMEN'S
& WAREHOUSEMEN'S UNION
HARRY BRIDGES

May 7, 1963

EXHIBIT GL

APPLICATION FOR FULL (CLASS "A") REGISTRATION AS LONGSHOREMAN

San Francisco

Employes with limited (Class "B") registration are the only persons eligible to file this form.

Name (in full) **Stanley L. Weir**
Address **1720 Buena Avenue, Berkeley 3, Calif.**
Limited Registration No. 80524 Social Security No. 556-28-5158

1. Have you worked continuously on the waterfront since your limited registration was issued? **Yes.** If answer is No, explain:
2. Have you done any work away from the waterfront since your limited registration was issued? **No.** If answer is Yes, explain:
3. Since you were registered, have you met the availability tests applied to limited (Class "B") registration longshoremen by the Labor Relations Committee? **Yes.** If answer is No, explain:
   I was charged in April 1963, with failure to meet the test in June 25 to July 29, 1962, but I was cleared.
4. Have you ever been delinquent in making prompt payment of your pro-rata share of dispatch hall expense? **No.** If answer is Yes, explain:
5. Have you ever violated any Labor Relations Committee "low-man out" or other dispatch rules? **No.** If answer is Yes, explain:
   I have not knowingly violated any LMO, or dispatch rules. On May 2, 1961 I was carried on overtime by error and without my knowledge. A correction was made.

6. Have you ever been subject to disciplinary action or reprimand under the contract grievance procedure? No. If answer is Yes, explain:
7. Are you now physically able to perform hold work? Yes. If not, what is your disability?
   But I am not completely recovered from an industrial accident which injured my foot on November 6, 1962. (Pier 92-MTC) However, since returning to work in March 1963, I can and have made out alright.
   Was it incurred as a result of an industrial injury? .....
   If answer is Yes, explain: (Give full details of date of injury, of place of injury, or circumstances of injury, of name and address of employer in whose employ injury was incurred, and whether compensation was paid or is now being claimed as a result of the injury.)
8. Are you now eligible for "Benefits B" under the ILWU-PMA Welfare Plan? Yes. If answer is No, explain:
9. Do you hereby certify that you are physically able and willing to work as a hold man for a period of five (5) years following any acceptance of your application for full (Class "A") registration? Yes. If answer is No, explain:

* * * * * * * * * *

If additional space is needed to explain any answer do so on a separate sheet to be attached to your application. Number the explanation to show what answer is being explained.

I, Stanley L. Weir understand that my application is received under the following conditions, to which I agree:

1. By receiving this application, the Joint Labor Relations Committee does not assume, agree or undertake to accord me full (Class "A") registration or any employment whatsoever.
2. Previous full (Class "A") registration shall have priority rights in case the number of full (Class "A") registration longshoremen is reduced.

3. Failure to appear on request for interview or to answer any and all questions in this form and those that I may be asked by the representatives of the Joint Labor Relations Committee or any misstatements or misrepresentations shall be cause for disqualification or deregistration.
4. This application for full (Class "A") registration, and employment thereunder for which I am applying, are and will be governed by the Pacific Coast Longshore and Clerks Agreement between International Longshoremen's and Warehousemen's Union and Pacific Maritime Association and by rules with respect to registration and deregistration established by these parties. If my registration is accepted, my employment will be governed by such contract and rules now in effect or hereafter to be agreed upon or adopted by these parties or any Labor Relations Committee. Registration shall be subject to the Labor Relations Committee's right to revoke my registration under rules adopted by the Committee or for failure to meet any lawful obligations under the collective bargaining contract to pay my pro-rata share of the support of the dispatch hall, the Labor Relations Committee, etc.
5. The Joint Labor Relations Committee is obliged not to discriminate against any employe or applicant for employment because of race, color, creed, or national origin. This obligation not to discriminate in employment includes, but is not limited to, the following: HIRING, PLACEMENT, UPGRADING, TRANSFER, OR DEMOTION, RECRUITMENT, ADVERTISING, OR SOLICITATION FOR EMPLOYMENT, TRAINING DURING EMPLOYMENT, RATES OF PAY OR OTHER FORMS OF COMPENSATION, SELECTION FOR TRAINING INCLUDING APPRENTICESHIP, LAYOFF OR TERMINATION. Any such discrimination or discrimination because of religious or political beliefs, or because of membership or nonmembership in the union, or because of activity for or against the union or absence thereof is a viola-

tion of Section 13:1 of the Pacific Coast Longshore and Clerks Agreement.

6. Any complaints I may have regarding my application for full (Class "A") registration, my registration, or my employment (including all discrimination complaints) will be handled under the grievance procedure set forth in the contract. The exclusive procedure for such claims begins with the filing of a grievance and its processing under the contract grievance procedure. Any grievance attacking the Committee's action must be filed within ten (10) days of the publication of notice or actual notice or notification of the Committee's action. The ten (10) day time limit on the filing of grievances means that if I do not file it within this time, I can never raise the issue.
7. This application must be filed IN DUPLICATE in accordance with instructions contained in NOTICE of Applications for Registration as Fully Registered (Class "A") Longshoremen. All written communications and grievances regarding this application should be forwarded to the Joint Labor Relations Committee, 16 California Street, San Francisco.

Draft status None Draft Board number ..... City .....
State.....

Date application signed May 8, 1963 Stanley L. Weir
(Signature of applicant)

Before signing this application fill in your name on the previous page and read and understand the conditions set forth, numbered 1 through 7, inclusive.

For JLRC use only:
Registered by Joint Labor Relations Committee ..... 19....
Full Registration No.

.....	.....
For Pacific Maritime Association	For International Longshoremen's & Warehousemen's Union

EXHIBIT 13

July 27, 1963

R. R. Holtgrave, Secretary
James Kearny, Chairman
JLRC (PMA-ILWU)
16 California Street
San Francisco, California

Dear Sirs:

Your committee de-registered me on June 17. On July 24, I received your letter denying my hearing appeal. In so doing you consummated an action that is discriminatory. You have not judged all the men involved by the same standards.

I appeal your decision and request another hearing as stipulated, where I will prove and document this discrimination.

I have never been able to get from you an official statement specifying the alleged charges against me, nor did your committee produce documents to substantiate the charges.

Would you please correct this situation for the next hearing.

Sincerely,

MELVIN KENNEDY
#1361 Oak St.
FS 18 Calif

C.T. 674, 675.

Title of Court and Cause

STIPULATION AS TO TESTIMONY

IT IS HEREBY STIPULATED by and among counsel for the plaintiffs, counsel for defendant Pacific Maritime Association and counsel for defendants, International Longshoremen's and Warehousemen's Union and Local 10 of the International Longshoremen's and Warehousemen's Union that this Stipulation as to Testimony is to provide evidence in addition to all the evidence heretofore received at this trial and is entered into subject to the following:

1. This is not a stipulation that the facts recited herein are true, but only that the witnesses would testify as set forth below.

2. No lesser, greater, or particular weight shall be given to the testimony set forth herein on the ground that it has been submitted by stipulation.

3. Each item of testimony deemed to be given by the terms of this stipulation is presented to the Court for its consideration in light of the entire record herein, including the testimony heretofore received, the exhibits heretofore received in evidence and the exhibits to be received in evidence, and for the Court's evaluation - as to its credibility, weight and sufficiency - as part of the whole record.

4. The failure to call or recall a witness to deny the accuracy of any testimony in this stipulation shall not be taken to require the inference that the parties accept the testimony as accurate.

5. The Court now has before it a record that will permit it to make lawful and proper credibility findings, to be given their usual weight on appeal, as to items of testimony submitted by this stipulation and as to any witness who is deemed to give testimony hereunder, and a record upon which the Court can resolve the relevant and material conflicts, if it finds any, within the testi-

mony here presented or between items of the testimony here presented and the balance of the record herein.[1]

* * *

I.

Each of the plaintiffs (other than Stanley Weir and James U. Carter) shall be deemed to have been called or recalled as a witness, to have been examined, and to have given the testimony herein contained as set forth hereinafter.[2]

DIRECT EXAMINATION OF PLAINTIFFS

C.T., 678:15-18.

During my employment, I attended B men's meetings when union officials told the B men to obey the rules. I assumed the union officials were referring to the rules which had been provided to me.

C.T., 680:10-11.

From time to time I had other persons of my own selection sign-in for me at the dispatching hall.

C.T., 684:8-14.

Nearly all B men were critical of the freeze on promotion in the M & M agreement. We based this criticism on our feeling that it was unfair to require us to remain in B status and on our feeling that the major financial benefits of the M & M agreement go to the Class A longshoremen only and that the Class B longshoremen would be required to do the heavier and more arduous or onerous work on the waterfront.

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1. The matter in brackets is not in the stipulation in words used therein, but the substance of the matter in brackets is included in the stipulation. The statement made in brackets is for the purpose of clarifying a possible uncertainty as to a name, date, time, or exhibit number, etc.

2. Unless the particular excerpt indicates to the contrary, the testimony quoted herein is the testimony of each of the 47 plaintiffs, *that is every plaintiff except Stanley Weir and James U. Carter.*

CROSS EXAMINATION OF PLAINTIFFS

C.T., 688:7-20.

With respect to my testimony on direct examination about signing the 1958 and the 1963 applications: When I said that I did not intend to waive any rights, I was referring to my right to require the union to live up to its duty of fair representation and my right not to be discharged in violation of the National Labor Relations Act or the collective bargaining contract. I admit that at no time did I ask anybody whether there was any claim that I was waiving any such right. I admit that I did not know about the duty of fair representation when I signed these documents. When I was signing them, I did not think of the National Labor Relations Act and did not know anything about the provisions in the collective bargaining contract. I admit that I did not ask anyone whether I would waive any such right by signing my B or my B to A application. This subject was never discussed, and in fact most plaintiffs testify: I gave no thought to the question of my intent in signing either application until I was prepared for my testimony at this trial.

C.T., 690:2-31.

What I heard and saw at these meetings (and read in papers that were made available at these meetings) provided me and the other B longshoremen with information with respect to the terms and conditions applicable to our jobs as B longshoremen. I obtained other information from Local 10 Bulletins that were distributed or made known to me and through conversations with other longshoremen. I and the other B longshoremen were given information by union officials as to rules governing the conduct of the B men in our jobs as B longshoremen. These related to our conduct in the dispatching hall and on the job.

I remember that on at least one occasion, and there may have been more but I do not recall, we B longshoremen received warnings that both the union and the employers were checking our conduct at the hall and on the job, and that both were keeping records on this general subject matter. I remember hearing such warnings from a number of the union officials during the B men's meetings. I also may have heard such warnings from union officials from time to time outside of the B men's meetings, but I cannot remember. I recall that on at least one occasion Harry Bridges talked to us about our conduct. His warnings were strong and blunt. I remember that he made some statements that black marks were being put down, doing so after he had talked for many minutes when he said that some of the B longshoremen were engaging in improper conduct and that we should stop it. Some of the plaintiffs recall that Bridges was referring to conflicts between B men and A men and dispatchers and that the B men were told they should do what the A men and dispatchers told them to do. Some of us recall we were told that violations of the rules would be considered when the question of promotion to Class A seniority status was under consideration. I remember that the phrase "You should keep your nose clean" was used on one occasion by Bridges when talking to the B men. I do not deny that it may have been said by others, but I do not remember. I was aware that Class B longshoremen were subject to stricter rules than the Class A longshoremen and that they could be subjected to more stringent penalties than the Class A longshoremen.

C.T., 691:1-2.

I acknowledge that I and all other B men had to keep an absolutely clean record.

C.T., 691:22-24.

I was told and knew that I was required to maintain good conduct while on the payroll on the job and that I was required to maintain good conduct at the dispatching hall.

C.T., 691:29-629:2.

I recall that I learned that I was responsible for being on the master dispatch sheet (for every day that I was available for work) at the correct number of hours, that I was responsible for being signed-in on the sign-in sheet at my correct hours, and that I was responsible for any errors in signing-in or in taking a job at less than my correct hours, whether I signed-in for myself or someone else signed-in my work number for me.

C.T., 697:2-7.

No one of the plaintiffs can give any testimony, other than that given by Frank Nereu based on his time book entries, as to any specifics as to any incident when he was told to "go out on your correct hours" or "come up on your correct hours" (or the substance thereof) on any day when he was on the master dispatch sheet at hours other than the hours figure at which he or his designee had signed him in.

C.T., 697:15-21.

Except for F. Nereu, each of the other plaintiffs who had any LMO charges against him testifies: I make no claim to having any knowledge or information that any charge that I dropped LMO hours, whether or not resulting in deregistration, was in any way related to or caused by the practices described by plaintiffs as occurring at the dispatcher's window or the complaint window or that it was in any way attributable to the actions or omissions of any of the dispatchers.

C.T., 698:18-28.

From what I observed, I do not claim that there were more than one or two occasions in any week, for the whole group of from 750 B men [in 1959] to 550 B men [in February, 1962], in which a B man was dispatched in any manner different than on the basis of the notation on the master sheet of the work number within an LMO hours grouping which was placed on the master dispatch sheet by the dispatcher according to what was set forth on the sign-in sheets or according to a request for a correction of the place of the work number on the master dispatch sheet. I do not deny that on some days some B men's work numbers were on the master dispatch sheet at the wrong LMO hour figure and the B man involved did not take any action to get a correction made.

C.T., 700:1-701:6.

[A]s to LMO and pro-rata, I was shown the minutes of the meetings of the B men during the period 1959 through 1963 that are in evidence, Exhibits GB, N, GC, GD, GE, GF, EG, GH, S and GR. These minutes show that from time to time we were addressed by various officials and spokesmen for the union, such as Harry Bridges, Bill Chester, Frank Stout, Bob Rohatch, Harold Yanow, Bill McGee, Tommie Silas, Albert James, Martin Callaghan, Reino Erkkila, Mike Samaduroff, Dave Littleton, and others. According to these minutes it is reported that we were told on these various occasions that the union expected strict observance of all rules by us, that the need for us to live up to the rules was stressed, that we were warned against pilfering and that certain rule violations would mean we would be removed from the industry, that we were encouraged to ask questions at any time concerning matters we might not understand and be clear about, that only such things as sickness and injury would exempt us from paying our pro-rata share, that we should keep careful records of our hours and sign-in so that there would be

less chance of any mistakes occurring, that men were being de-registered for not making themselves available, that we were being watched about unwarranted claims of no passes to avoid working at the Army base, that there were some misfits among the B men, that a record was being kept on each of us, that we were expected to do the right thing for the benefit of all of the B men, that some of us were apparently being instructed in how to chisel by some of the A men and that the union was deeply concerned about how the hiring hall was operating and matters of that kind, that it was necessary that each "B" man "keep his nose clean", that the "bulk of the membership went through the same similar apprenticeship before becoming 'A' members", that the "B" men who deserved to be moved to "A" would be promoted, that various infractions would count against "B" men, and that black marks were being recorded. Specifically, I have read the language in the minutes of the B men's meeting of February 9, 1962, that reports on what Harry Bridges said, in the following language:

> "He also stated that the Union has some gripes against the 'B' men. Some 'B' men are making like 'A' men already. Some are going to be dropped to the bottom of the list. He informed the 'B' men that the bulk of the membership went through the same similar apprenticeship before becoming 'A' members. Also stated that no 'B' men will get to first base by suing the Union. No one has succeeded in getting registered through the court of law. 'B' men with too many complaints against them will not be registered 'A' men."

C.T., 705:1-6.

Plaintiffs recall hearing the statement "keep your nose clean" and the statement "black marks are being put down" related to their employment. Some plaintiffs testify: It is my impression that the emphasis of these warnings was directed toward on-the-job conduct. Others testify: I retain the impression that we were to obey all the rules without distinguishing between such rules.

C.T., 705:12-20.

By about six months after I became a B man, I had learned that the JPLRC had the power to decide whether I would keep or lose my job as a longshoreman. In regard to my direct testimony as to the effect of LMO violations: At no time did any representative of Local 10, of the ILWU International, of PMA, or of the JPLRC make any statement to me, or to any group of the B longshoremen including me, that violations of the LMO rules would not be considered by the JPLRC in determining whether or not I would keep my job as a B longshoreman or would promote to a job as a Class A longshoreman.

C.T., 705:25-32.

I recall no statement in which anyone told me - prior to August 1, 1963 - that I did not need to worry about any possibility that LMO violations would keep me from holding on to my job as a Class B longshoreman (or promoting to Class A) unless I violated the LMO rules a third time and after I had been given (first) a 30-day suspension and (second) a 60-day suspension. for LMO violations or late payment of pro-rata or any employer complaint (except one for pilferage) when the time might come for the JPLRC to consider my record as a Class B longshoreman.

C.T., 706:11-17.

Some of the plaintiffs testify: I also learned that other B men who had received such notices of deregistrations had decided to file such grievances, that they did so, and that they appeared at hearings of the Joint Port Labor Relations Committee. Some of the plaintiffs testify: I learned that some of the men who appeared were deregistered, that some were returned to registered status on probation, and that others were returned to registered status without probation.

C.T., 706:21-707:3.

I knew that I was to obey all applicable working rules and other provisions of the collective bargaining contract and that I was otherwise required to maintain good conduct on the job. I knew that it was misconduct on the job if I were to participate in a refusal to work as directed, a refusal to take orders, a leaving of the job without authorization, the creating of any disturbance, fighting, or assault. I learned that it was misconduct to show a general improper attitude, including arriving late on the job or leaving the job early. I knew that misconduct also included pilferage, smoking on the job in unauthorized places, horseplay, intoxication or failure to show on the job or failure to replace myself through the proper procedures under the dispatching rules. I knew it was misconduct to chisel on LMO hours so as to take a job while on the board at lower hours than were correct. These matters were well known on the waterfront. I did not think it made any difference if I engaged in misconduct unless I was accused of it and found guilty right away by the JPLRC.

C.T., 707:20-24.

No one told me that the JPLRC would disregard my late payments of pro-rata as part of my record as an employe in my job as a B longshoreman when the JPLRC would determine whether I would hold my job as a B longshoreman or would be promoted to Class A. I remember that I knew that the JPLRC had a broad power to deregister men.

C.T. 708:12-23.

During 1960, I learned that some Class B longshoremen were interviewed by the Investigating Committee of Local 10 during the winter or spring of 1960 regarding a proposal that some B men be promoted from jobs as B longshoremen to jobs as fully registered (Class A) longshoremen. I do not recall whether I

was at the meetings of Local 10 when these matters were under discussion, but I was free to attend the Local 10 meetings at that time. I have seen Exhibits DS and LD. I know of no facts to contradict the statement in the minutes of the Local 10 meeting of February 15, 1960 (Exhibit LD) reporting that Local 10 had adopted the policy of processing "all 'B' men into 'A' registration list taking men in the order of their registration with the exception of those whose action as 'B' men merits deregistration, and those who merit being put lower on the list".

C.T., 709:1-3.

Most of the plaintiffs remember that some time during the summer or fall of 1962 we learned that it was expected that the freeze on promoting B men would soon be lifted.

C.T., 710:3-5; 710:22-26; 711:15-18; 711:32-712:3.

I (except for Nisby and Straughter) filed my application to promote from Class B to Class A on the form that is marked Exhibit H. The form I signed included the following matter:

* * *

> "If my registration is accepted, my employment will be governed by such contract and rules now in effect or hereafter to be agreed upon or adopted by these parties or any Labor Relations Committee."

* * *

> "Any complaints I may have regarding my application for full (Class 'A') registration, my registration, or my employment (including all discrimination complaints) will be handled under the grievance procedure set forth in the contract."

* * *

Most of the plaintiffs testify: I do not recall whether I read this language. Some plaintiffs testify: I probably read it. All

plaintiffs testify: I have no recollection that I gave any thought to any of this language while I was filling out my application.

C.T., 712:27, 713:3-10.

Many of the plaintiffs . . . learned [during the spring of 1963] that we could speak to the record checker, who was Asher Harer, about our being promoted to Class A longshoremen. Many of us did have conferences with Asher Harer as shown by Harer's records, which are Exhibits 457 through 497, inclusive. Most of the plaintiffs state that we knew we could speak to members of the B list committee, such as Tommie Silas, and that we could speak to members of the Investigating Committee, such as Odell Franklin, with respect to this general subject matter of promoting to A and becoming a union member.

C.T., 713:11-21.

At the trial I was shown Exhibit BM, which is a Local 10 Bulletin of May 31, 1963, and I have read (or there was read to me) the language:

> "'*B' MEN STATUS.* The meeting of June 6th will clear up much of the real and imagined confusion regarding the 'B' men. As is known some 380 were initiated into the union at the previous meeting but their promotion to 'A' registration was held up pending the completion of the re-checking of a number of men. The re-checking was required to make sure no mistakes were being made."

At trial, I have looked at the minutes of the June 6, 1963 meeting (Exhibit AD). I do not recall if I attended that meeting of Local 10, although I was free to attend if I saw fit.

C.T., 715:4-7.

I have seen the notes prepared by Mr. Edwards with respect to my hearing (the exhibit within Exhibits JI to LC that relates to me). What these notes state appears to be substantially correct.

C.T., 715:31-32.

I (except for Nisby, Straughter, Lacy, Cafeterio, Reed and Hughes) did in fact sign and send in a grievance in the form of Exhibit 13.

C.T., 717:31-718:14.

I have also had my attention called to a letter written by Stanley Weir dated July 27, 1963, as copied in whole or in part in the Unemployment Insurance transcript, Exhibit 10-12, p. 60, which reads:

> "You recall that our first meeting last Thursday night we decided to send the Joint Labor Relations Committee another appeal based upon the Discrimination Section 13 of the Master Contract."

While I do not have any clear recollection as to what occurred at that meeting or as to this letter, I do not deny that Stanley Weir was correct in the testimony before the Unemployment Insurance proceedings in which he stated that he had sent out this letter and that it correctly set forth what those members of the Longshore Jobs Defense Committee who attended that meeting had decided at the meeting on Thursday, July 25, 1963. While I am unable to recall, I am unable to deny that we decided that we should assert claims under ¶ 13. I simply do not remember. I did in fact go along with the decisions made at that meeting.

C.T., 718:16-19.

A few of us had heard that a member of the Labor Board (I think a former employee of PMA) was friendly to PMA. and

some of us believed that we could expect to get an adverse decision from the Labor Board because of this fact.

C.T., 719:2-5.

We plaintiffs discussed, in our early LJDC committee meetings, the matter of going to court or to the NLRB. We did not discuss using the grievance machinery at any time from shortly after we sent the JPLRC the letter of July 27, 1963 (in the form of Exhibit 13) until May, 1964.

C.T., 719:19-26.

From and after no later than September 3, 1963, we had retained Mr. Gordon and from that date on we had the full benefit of his advice as to which forum to take our case. I can recall no communication regarding whether or not we should use the grievance machinery or any discussions of this among the LJDC longshoremen members from shortly after the time we sent in our July 27, 1963 letter (Exhibit 13) until we received Exhibit HB from the JPLRC or Exhibit LS, second page, from Sidney Gordon in May, 1964.

C.T., 720:1-6.

Neither I nor the plaintiffs as a group nor their representatives had any discussion with the Local 10 representatives, after the JPLRC meeting of July 22, 1963, to see if there was any way we could get Local 10 to work jointly with us in going through the grievance machinery, either by taking the issues directly to the Joint Coast Labor Relations Committee or through some other method of procedure.

C.T., 720:9-11.

Some plaintiffs testify: I learned that a telegram was sent to Local 10 in the middle of August. I identify it as Exhibit CV. We did not expect a response.

C.T., 722:4-26.

I have no recollection at this time, one way or the other, as to whether or not we learned that on July 28, 1964 Judge Wollenberg refused our request for an order to enjoin the grievance-arbitration proceedings or that in open court before Judge Wollenberg on June 2, 1964, the lawyers for the ILWU and the lawyer for the PMA had stated that we could have our own lawyers represent us in the grievance-arbitration proceedings.

Counsel for a defendant read from the proceedings before Judge Wollenberg on June 2, 1964. Each plaintiff thereafter testified: The first time I learned that Judge Wollenberg said anything in June, 1964, concerning our participation or nonparticipation in the grievance-arbitration proceedings and its possible effect on our case was either in Court in 1974 or when I was on the witness stand giving this testimony.

We cannot remember if, after that hearing, we received any information as to the terms of any "further order of the court" referred to in the second page of Exhibit LS. I did not ask anyone about such an order. Later, Mr. Gordon sent us information that we should not participate in the other grievance steps and should not attend the Joint Coast Labor Relations Committee meeting in November, 1964.

We again discussed this subject of using the grievance-arbitration procedure after we received the decision of the Joint Coast Labor Relations Committee of December 18, 1964. We did not go to the arbitrator. We pursued our case in court. We had already made that decision at least by May of 1964.

C.T., 724:1-3.

At no time did we give any consideration to how much it would cost for us to have a lawyer handle our case before the Coast Arbitrator as compared with the cost of having the lawyer handle our case in the courts.

C.T., 724:11-25.

As far as I was concerned I decided, since we had gotten together in the Longshore Jobs Defense Committee and since we had a lawyer, that I would do what the lawyer told me to do and that this was the only thing that was of any real importance that I remember about this.

After we retained Sidney Gordon, we had some further discussions about how we should proceed in court and other matters relating to the loss of our jobs. I cannot recall where or when all of these occurred. I remember that they were frequent. At the time of filing the complaint that Sidney Gordon filed, I knew that Stanley Weir was dealing with Sidney Gordon on our behalf. Before I came on the witness stand, I took no steps to read the complaint or any amended complaint filed by Sidney Gordon, except that plaintiff Gums read the Third Amended Complaint shortly after it was filed. In fact, I did not read any of Sidney Gordon's complaints, because I assumed Stanley Weir was acting on my behalf in dealing with the lawyer; I cannot understand the original complaint but I object to the allegation that there was racial discrimination because I knew there was none.

C.T., 725:8-29.

At the trial there has been shown to me the 1958 rules as to registration and deregistration (Exhibit 2). These were shown to me as a document referred to in the complaint that was originally filed in 1964 and that was attached to the fourth amended complaint, which was dated in May, 1965. I have read or there has been read to me the language in § 7(a) and (b) of these rules (on pages 4 and 5 of Exhibit 2):

> "(a) Addition to the registered list (Class A) shall be made solely on the basis of applications from the limited registration list (Class B). The men at the top of the limited registration list shall be given, in sequence, first opportunity to apply for full registration.

"(b) Additions shall be made after notice, in the number and at the time fixed by the Joint Labor Relations Committee. Each application shall be reviewed on the basis of the standards set forth in § 6 above, with consideration of ability, efficiency, experience, regular availability and other relevant factors. A longshoreman on the limited registration list (Class B) will not be eligible to promote to the registration list (Class A) unless he becomes entitled to Benefits B under the Welfare Plan and the comprehensive physical examination available to him as one of said benefits shows that his physical condition is such that he is fully able to do all types of longshore work."

C.T., 726:3-19.

I did not then [when answering my interrogatories] give any particular attention to the language that the JPLRC would review my B to A application "with consideration of ability, efficiency, experience, regular availability, and other relevant factors" although I knew that these factors would be considered in any employment relationship.

At the trial there has been shown to me Exhibit CF, the letter sent to me under date of July 31, 1959 in which language from the 1958 Rules as to Registration and Deregistration is quoted. My attention was called to the language in Exhibit CF that reads:

"9. *De-registration of limited Registration (Class B)* Longshoremen.

"(a) A Class B longshoreman may be de-registered in accordance with the provisions of Section 16(f) of the Basic Longshore Agreement and, in addition, he may be de-registered for cause by the Joint Labor Relations Committee (in accordance with such rules or uniform procedures as may be established or followed by such Committee) . . ."

C.T., 727:7-10.

I do not deny receiving a copy of this letter. However, I have given no particular consideration to it since the day I received it.

I am not sure that I read it, although I generally read the material I received in the mail.

C.T., 727:31-728:1.

I did not pay any particular attention to the provisions dealing with discrimination in Exhibit 2. I never thought about the fact that the 1958 rules included any language about discrimination for union membership, etc.

C.T., 728:17-28.

While I was on the witness stand, I read—or there was read to me—the language in the JPLRC minutes of June 17, 1959 stating that misconduct could lead to discipline, which is described:

> "Severe disciplinary action, depending on severity of offense and number of previous offenses, by the Labor Relations Committee. Such action to count against the individual when consideration is given to promotion to Class 'A' registration."

I have, at the trial, seen that the document from which this is quoted is Exhibit 89 and that these minutes are included in Exhibit N along with the LMO rules of December, 1958 or May 27, 1959. I did receive a copy of Exhibit N. I do not deny that a copy of Exhibit CF was sent to me at my last known address in July of 1959.

C.T., 729:2-9.

I have no recollection that this language quoted from the June 17, 1959 minutes was in my mind from shortly after it was sent to me or was picked up by me at the dispatching hall, whichever was later, until I testified in this case. I do not know if I ever read this prior to the trial, but I probably did when I received it. I did not remember it before, or when, I was shown it at the trial. I have given it no consideration at all, or from the time I first read it (if I read it at all before I saw it at the trial); how-

ever I knew that my record as a longshoreman would be considered by the JPLRC.

C.T., 731:29-34.

Until this cross-examination, I did not notice that this language reproduced on p. 58 above [C.T., 730] had in it the dates of December 30, 1958 and May 27, 1959 or that Exhibit 89 and Exhibit CF had later dates. In following the procedures at the hall for getting dispatched to the job, I did not reach any decision or take any action on the basis of my knowledge as to the language that is in item 17.

C.T., 732:6-16.

As far as I know, neither the JPLRC, Local 10, the ILWU or the PMA did anything to carry on the weekly checks referred to in this language with respect to the B longshoremen although I knew there were checks from time to time of the A longshoremen as to LMO violations. I did not think that this meant that B men could drop LMO hours. I knew that dropping LMO hours was against the JPLRC rules. No one representing the ILWU or Local 10 or the PMA ever told me either that I could pay my pro-rata late without its adversely affecting my opportunity to advance to A or to remain as a B man or that I could drop hours without its in any way adversely affecting my possibility of advancing from B to A or remaining as a B man.

C.T., 733:18-22, 26-28, 31-32.

I have no recollection that my conduct was guided by any written rule on this subject during the period from January 1, 1962 (including the period for which I was checked for LMO violations) until I discussed this subject with others after we received the letter dated June 17, 1963 (Exhibit CZ, etc.) . . . . I didn't consider whether the penalties were in a written rule or

an unwritten rule. I knew there was such a rule and I expected to be penalized under it if I dropped hours.

* * *

I assumed that there were checks and I would be caught if I dropped hours.

C.T., 734:23-28.

I knew that a B man was violating the rules if he dropped LMO hours. I knew we were subject to stricter rules than the A men and to more stringent penalties than the A men. I did not know, and no one told me, that the "stricter rules" or "more stringent penalties" applied to LMO violations. It was my understanding that these applied only to such contract or rules violations as intoxication, pilferage and availability.

C.T., 735:7-16.

For the second time while I was on the witness stand I read, or there was read to me, the language in the JPLRC minutes of June 17, 1959 stating that misconduct in the dispatching hall would count against a B man when his promotion to Class A was under consideration. I deny that dropping LMO hours or chiseling on LMO was "misconduct in the hall" because there were special LMO rules for dropping hours. I know that LMO violations were misconduct. I know that chiseling was misconduct. I know that the actions that a longshoreman does in participating in the LMO procedures all take place in the dispatching hall. I admit the only place where chiseling or LMO violations can occur is in the hall.

C.T., 735:19-30.

My attention has been further called to the language in Exhibit DC, of early 1959, which I do not deny is the letter that was sent

out to notify me to come in for an interview. I had my attention called particularly to the following:

> "Failure . . . to abide by other provisions in the contract, working rules or determinations of the Joint Labor Relations Committee can be cause for suspension or loss of registration."

I knew that a finding by the JPLRC that a man had been intoxicated on the job, had refused to work as directed, had gotten into an argument with a supervisor, or had pilfered was a finding that the man had failed "to abide by provisions in the contract, working rules or determinations of the Joint Labor Relations Committee".

C.T., 736:27-737:9.

The rule that a longshoreman should not drop LMO hours was not new in 1963, and I knew about it from about the first day I went to the longshore dispatching hall. The rule that a longshoreman should pay his pro-rata share on a certain day each month was not new in 1963, and I knew about it from the first day I went to the longshore dispatching hall. The rule that a longshoreman had to be available for work 70% of the time was not new in 1963. It was known to me by the time I had worked on the waterfront a short time. I knew that it was misconduct to engage in any of the behavior described in this paragraph whether there was a precise rule, or not, as to these special types of behavior.

I did know that the B men did not have the job security that A men had. I knew the rules were stricter as to B men. I knew the penalties on B men were stiffer. I did not like being treated as a second class citizen because I was a B man.

C.T., 738:4-27.

While I was on the witness stand I read, or there was read to me, the 1960 motion of Seldon Osborne on B men, as reported

in the minutes of the Executive Board of Local 10 held on January 14, 1960 [Exhibit DS]. This motion reads:

> "[Osborne] THAT WE PROCESS ALL 'B' MEN INTO 'A' REGISTRATION LIST TAKING MEN IN THE ORDER OF THEIR REGISTRATION WITH THE EXCEPTION OF THOSE WHOSE ACTION AS 'B' MEN MERITS DEREGISTRATION, AND THOSE WHO MERIT BEING PUT LOWER ON THE LIST."

While I was on the witness stand there was read to me the following language from the minutes of the Executive Board meeting held on January 28, 1960 [Exhibit MC] reading:

> "SUB-COMMITTEE REPORT: Brother Frank Stout gave a detailed report of the Sub-Committee which was selected to make recommendations regarding the promotion of 'B' men to full membership and registration. He quoted the Minutes of the Meeting they had and stated that this would give added protection to the Union as well as set an orderly procedure for promoting the 'B' men.
>
> "Brother Hogan of the Sub-Committee pointed out the need to use the provisions of the Coast Committee's MEMORANDUM OF RULES COVERING REGISTRATION AND DEREGISTRATION OF LONGSHOREMEN IN THE LOS ANGELES-LONG BEACH HARBORS,

C.T., 740:21-24-741:5-6, 12-13.

Plaintiffs Herman Crawford, George R. Williams, William Jones, Eathen Gums, Walter L. Robinson, Timothy Carter, Louis T. Lacy, E. Graves, L. J. Provost, R. W. Fleeton, Robert E. Birks, Anthony Melvin, and Oliver Geeter testify:

I did learn that the processing of "B" men was stopped by the "freeze on registration" [in 1960] . . . . After the meeting, I never asked anyone at any time about what had happened.

C.T., 741:20-21, 28-30.

Plaintiffs other than those named in the preceding paragraph testify: . . . I do not recall that I made any inquiry with respect

to whether the B man's LMO record was being considered in determining whether he could advance to A registration at that time (1960).

C.T., 744:7-32.

Nearly all the B men testify: I criticized the freeze on promotion because I thought it was unfair to make us stay as B men. I felt I had spent enough time in B and that I was able to do the work of a longshoreman as well as any of the A men. I did not like being in a second class situation. I did not care how long the B men might have remained as B men in other ports up and down the coast or the problems that the ILWU in general had in its efforts to get the PMA to agree as to how many B men would promote to A and in what port. I simply was fed up with the idea that I was going to have to continue to be a B man and be shoved around by the A men.

I believed it was unfair to give the A men the advantage of being able to choose and to not choose to do the heavier and more onerous work and that B men had little opportunity to do the skilled work, which paid more money. I had been a B man since 1959, and so I felt that I should have my share of the easy work. I thought there was a reason to give the easier work to the older men who had been there longer, in part because they had lived through the 1934 strike and the 1948 strike and had participated in the job action that had gotten better conditions on the West Coast waterfront. I did not think that they should get easier work simply because they had more seniority. Our complaint was not only that A men got the easier work but also because they got more work than we did in that they could work every day while we could sometimes get only one or two days' work each week. It was a combination of these two factors. I was satisfied that I was as good a longshoreman as anyone on the waterfront, and it was irritating that neither the PMA nor Local 10 would recognize

that this was the case. It was as much a burden to me as it was to the A men to have to do the heavier more arduous and onerous work on the waterfront.

C.T., 745:2-7.

This was unfair because under the M & M agreement all of the financial benefits went to the A men and at the same time the B men were required to do the heavier and more difficult work.

After giving this explanation, each plaintiff testified: This was the understanding I had when the M & M agreement was being discussed and ratified in 1959 and 1960.

C.T., 750:1-4.

His [Cleo Love's] attention was called to the fact that ¶¶ 17.4, 17.43 and 17.431 of the contract were quoted verbatim on the first page of Exhibit AF. He testifies: This does not refresh my recollection that I ever knew that I might not have to pay for the cost of a ¶ 13 arbitration.

REDIRECT EXAMINATION OF PLAINTIFFS

C.T., 751:8-14.

From the time I began my longshore employment, I assumed that I would be required to live up to the rules which had been provided to me and that I would be judged and penalized according to the provisions of those rules. When union officials told us at B men's meetings to obey the rules, I assumed that they were referring to the rules which were then in existence.

C.T., 752:6-8.

Once we filed our letters of July 27, 1963, Exhibit 13, we really never expected to hear anything further from the JPLRC.

C.T., 755:30-756:3, 11-12.

Those plaintiffs who did turn their time books over to Mr. Gordon in 1963 have not seen their books since that time (except for those plaintiffs who used their time books during the Unemployment Insurance Appeals Board proceedings in 1963-64) until the middle of 1973 when they were called to the office of their present attorney to answer interrogatories.

RE-CROSS EXAMINATION OF PLAINTIFFS

C.T., 759:16-18.

I believe and still believe that I would have a clean record even if I chiseled on LMO, until I was caught and penalized.

C.T., 760:18-27.

Those plaintiffs who were deregistered in whole or in part because of late payment of pro-rata testify further: With respect to whether or not there were new rules applied retroactively regarding payment of pro-rata, I admit that I now know and that I knew in 1963 and in 1964 and that I knew while I was working as a B longshoreman that I was required to make payment of my pro-rata by a specific date each month and was so required from the time I first became a B man. I further admit that I was given written notice prior to being registered that there would be a duty upon me to pay the pro-rata if I were registered and that I might be deregistered for nonpayment of my pro-rata.

C.T., 761:2-22.

Those plaintiffs who were deregistered in whole or in part because of dropping of LMO hours testify further: With respect to whether or not there were new rules applied retroactively regarding the dropping of LMO hours, I admit that I now know and that I knew in 1963 and in 1964 and that I knew while I

was working as a B longshoreman that there was a rule against dropping LMO hours, but I cannot find that rule any place in the written LMO rules given me, although I recall being told by union officials (and it was common knowledge among all longshoremen) that dropping hours was against the rules, and that there was a rule against taking a dispatch slip if my work number was not on the master dispatch sheet (Rule 3 of the LMO Rules) subject to certain exceptions, and I know and knew that these rules were in effect and binding upon me during the entire period of my registration as a B longshoreman. I further admit that I was given written notice by Exhibits N and CF no later than July, 1959, that misconduct in the dispatch hall could lead to severe disciplinary action depending on the severity of the offense and the number of previous offenses and that such misconduct would count against me when consideration would be given to my being promoted to Class "A" registration and that the dropping of LMO hours was by taking a dispatch slip in the dispatching hall while on the master dispatch sheet at an hours figure lower than my correct accumulated LMO hours as of the day in question.

C.T., 762:11-19.

With regard to my testimony that "I believed that I could rely upon everything that the union informed me . . . regarding my job", I testify: I do admit that I was told by the union that it "expects strict observance of all rules" and that repeated and frequent "violations of the rules will make it more difficult for a 'B' man to advance to the 'A' list", that I was from time to time admonished "keep your nose clean" by the union. I knew, as previously testified to on my cross-examination, that I should keep an absolutely clean record if possible, but I can not testify now that I was told that by the union.

C.T., 762:32-763:6.

I knew that there were certain penalties that could be imposed for failing to meet the rules and requirements referred to above in my re-cross examination. I knew that these could be imposed during the course of the day-to-day administration of the contract after a complaint was filed against me and I was brought before the JPLRC on the complaint. I believed that my previous conduct could not be the basis for any penalty against me when I was being considered for promotion . . .

C.T., 764:10-29.

Each plaintiff was referred to the LMO Rules, Exhibit DO, and asked to read Rule 3, which states:

> "No registered man shall be dispatched from the Hall unless he is first signed in on the proper 'sign-in' sheet."

Each plaintiff was asked to read Rule 17 of the same rules, which states:

> " 'Checks' will be made each week and violators will receive the following penalties:
>
> | | |
> |---|---|
> | First Offense | 30 days off |
> | Second Offense | 6 months off |
> | Third Offense | Cancellation of Registration. |

Each plaintiff testifies: Throughout the time I was registered as a B longshoreman, I believed that an infraction of this Rule 3 was not a violation of the LMO rules that could subject me to the penalties set forth on the third page of the LMO rules distributed to me in 1959. I believed that I could be dispatched if I was not first signed-in without risk of being penalized under Rule 17 of the LMO Rules distributed to me in 1959 or any other rule. I was at no time at any B men's meeting when I heard it said that a penalty could be imposed for a dispatch contrary to Rule 3. I was never told this by anyone. I think that everyone believed that no penalty would be imposed for Rule 3 infractions despite the language of Rule 17.

C.T., 765:2-5.

I cannot now recall if, during the period beginning a few months after I was registered in 1959 until the start of this trial, I had any recollection of the documents marked Exhibit CL (2 pages) or Exhibit CF (4 pages).

RHODY ADAMS
DIRECT EXAMINATION

C.T., 767:9-11.

. . . I was working as a day man but because work was slow and I was not receiving dispatches during the day, I took jobs as a volunteer at night.

CROSS EXAMINATION

C.T., 768:5-14.

I have seen the work sheet for December, 1962 covering my record, Exhibit 472. I note that I was signed-in at 468 hours and was dispatched at 468 hours and worked 18 hours and that I next signed-in at 482 hours and was dispatched at 482, which was average. I should have signed-in at 486 hours. I was charged with dropping four hours. I also note that this record shows that after I was dispatched at 482 hours I worked 8½ hours on the 12th and 22¼ hours on the 13th, 14th and 15th; nine hours on the 16th and 8¾ hours on the 17th for a total of 48½ hours and so should have signed-in at 530½ hours and instead signed-in at 517 hours on the 18th of December.

C.T., 769:7-14.

Asher Harer and I went over the work sheets that he had with respect to my LMO situation. We reviewed two weeks covered on a work sheet. He told me that he was satisfied that these showed that I had dropped 27½ or 28 hours in a two-week period. At this time I cannot recall what was said between me and Asher Harer. However, I believe that Asher Harer was

trying his best to help me and wanted to be certain that if there were any way in which the number of LMO hours that I was charged with dropping could be reduced he would help me do it.

C.T., 769:15-770:9.

At my hearing at Pier 24 I was told that I could go to the records office and get my work sheets gone over in detail. I did do this. I do not remember whether I had my time books at that time. We went over the work sheets in part, and the PMA representative at the records office said that these showed that I had dropped at least 18 hours. Under these circumstances we didn't go into the matter any further because first the Investigating Committee, then Asher Harer, and then the PMA and ILWU representatives at the records office found that I had dropped more than 10 hours. I do not deny that they found this dropping of hours to be true. I deny that I dropped any hours.

At one time when work was slow on the day board I took jobs as a volunteer at night. I cannot recall when this occurred. This does not in any way relate to the dropping of 18 hours that is indicated by the work sheet for December, 1962. I think that I told Asher Harer that I had taken jobs as a volunteer at night at some time. I think that I told Asher Harer that I took jobs as a volunteer at night. I think that he reviewed my questions as to the facts based upon my volunteering at night and that he nevertheless concluded that I had dropped more than 10 hours. At the Unemployment Insurance hearing I testified as follows:

> "Q. Were you in agreement with what the record showed when it added up to 18 hours? Was it right?
>
> "A. Yes.
>
> "Q. So then you didn't go any further?
>
> "A. No, we did not go any further. There wasn't any use." [9-34]

This is my testimony at this date.

ANTONIO S. CAFETEIRO

CROSS EXAMINATION

C.T., 773:26-32.

. . . We went over the work sheets that are in evidence as Exhibits 487 and MF, covering August and October, 1962. These sheets showed that my LMO record was perfect in these two months except for two flops. There was no claim by anyone that I had made any mistake in my LMO hours as to one of these flops. The only claim against me was that I had failed to take average on Monday, August 13, 1962, after I had flopped on the preceding day, Sunday.

C.T., 774:1-4.

I argued with the committee that I should not be charged with dropping hours for this flop because I thought it had been the practice to ignore flops on Sunday. Neither the union representative nor the PMA representative agreed with me.

C.T., 774:11-15.

. . . I do not know if there was any notice given that the dispatcher was going to flop men on that occasion. I do not remember whether I signed-in my number after my previous job or if I had my partner do it or if I called the hall and asked whoever answered the pay phone to sign me in.

C.T., 774:21-25.

. . . I remember reviewing this matter with the record checker and telling him that I had flopped on Sunday, August 12, 1962, and that I was signed-in the next day at the same hours and had not taken average, although I did not have to sign-in because I was carried over on Monday's sheet.

C.T., 775:3-4.

. . . This was checked out, and he found that there was an actual flop.

JOHNNY J. CHERRY

DIRECT EXAMINATION

C.T., 776:5-13.

At my hearing on July 12, 1963 before the JPLRC at Pier 24, I was told that I had paid my pro rata late twelve times and that I had dropped thirty hours in September 1962. I admit the late payments of pro rata. When checking my records at the records office after my appearance at Pier 24, I had my time book with me and there were inconsistencies between my time book and the worksheets of the committee. My time book did not show that I had dropped any hours. I do not have my time book at the present time.

CROSS EXAMINATION

C.T., 776:28-777:8.

When I went down to the records office I talked to Mr. Edwards, who I knew was from PMA, and one of the Local 10 men on the B list committee, I cannot recall who it was. I had my time book with me. I went over the work sheets that the committee had and the information in my time book. I cannot now recall what were the facts that were important that were shown by the entries in my time book. I do recall, however, that the two people from the committee got from me all of the information I had in my time books and that they made changes on their records. I do not deny that the committee representatives may have checked some of the factual material I presented by looking at some other documents or by telephone, but I do not remember. After we had finished going through all of these things, Mr. Edwards told me that I had dropped only two hours of LMO and that my record would be corrected in that respect.

C.T., 777:16-19.

. . . I do not deny that the facts are, as shown in the exhibits in court, that the final conclusion as to these matters was that I had been late in the payment of pro-rata on 13 occasions, an increase of one time over what I was told at Pier 24.

HERMAN CRAWFORD

CROSS EXAMINATION

C.T., 778:20-23.

I went down to the records office and went over my LMO record with a representative of the union and a representative of the employers. On review of the matter I found, and it was determined, that I had dropped 7 hours of LMO.

C.T., 778:25-27.

On the pro-rata I am not sure whether I actually was late in paying 9 times or 10 times, but I admit that I was late in paying it at least 8 times.

ROGER W. FLEETON

DIRECT EXAMINATION

C.T., 781:7-9.

. . . I was charged with flopping on a Sunday in April 1962 and dropping five hours and flopping on a Sunday in August, 1962 and dropping eleven hours.

CROSS EXAMINATION

C.T., 781:27-782:3.

I mentioned the matter of flopping on Sunday while I was at Pier 24 because I had previously spoken with someone in the records office about my record on LMO. We had some discussions of flopping on Sunday. My conversation could have been with Asher Harer, but I do not recall. I saw a list posted of men who had passed and my name was not on this list. I went to check on my LMO records. At this time I cannot recall whether I met with Asher Harer or met with someone else at the records office. I do not deny that I spoke with Asher Harer. I just do not recall the situation at this time.

C.T., 783:8-9.

. . . I do not recall having any detailed discussion with him other than on the Sunday flop matter.

C.T., 783:17-20.

. . . I do not recall having had a conversation with Mr. Edwards at the records office regarding my case, but if it is his testimony that he met me there and told me that I would be charged with the flop on Sunday I would not deny that he was correct.

C.T., 783:22-27.

. . . I recall that the basis for not flopping apparently was that there was not very much work on most Sundays. I do not recall whether or not the dispatchers sometimes posted notices or made announcements on the loudspeaker that they would flop the men on Sunday and (sometimes) that they would not flop the men on Sunday.

OLIVER GEETER

CROSS EXAMINATION

C.T., 784:19-22.

. . . I was told that I could go to the union dues office if I thought there was any mistake in the information that I was nine times late in my pro-rata. I did not do so because I knew that I had paid pro-rata late nine times.

FRANK GIANNINO

DIRECT EXAMINATION

C.T., 785:9-11.

. . . At the records office after my hearing at Pier 24, John Trupp of PMA reduced the hours of LMO violations to eleven.

CROSS EXAMINATION

C.T., 786:2-5.

I remember that I went to the records office, some time after I had been at the Investigating Committee, and spoke to a union record checker. I don't recall the man's name. He may have been Asher Harer, but I do not recall.

C.T., 786:17-19; 24-27.

At the trial I have seen Exhibit 473, which I was told was a work sheet used by Asher Harer in studying my LMO record and which shows that I dropped 23½ hours. . . . I know that Asher Harer was doing his best to help me to be sure that I was not charged with dropping any LMO hours unless I had failed to satisfy the rules in some respect.

C.T., 787:15-26.

. . . I also note that after I returned from the job I took on October 9th, I was signed-in at 101½ hours for the 11th and flopped that day and it further shows that I was not signed-in on the board again until the 18th when I was signed-in at 154 hours. The day after I flopped I should have signed-in at average, which was 120 hours. I worked 8 hours on the 12th, 8 hours on the 13th, 8½ hours on the 14th and 10 on the 15th and 12 on the 16th, for a total of 46½ hours. Adding these 46½ hours to 120, I should have signed-in at 166½ hours on the 18th instead of 154 which I did. I do not know whether I figured my hours by taking only six hours for my flop on the 11th which would have given me a total of 52½ hours to be added to 101½. I have no other explanation. Because of this failure to take average on the 12th. I was 12½ hours low when I took the job at 154 hours on October 18.

C.T., 788:5-10.

. . . It may be that John Trupp was one of the men who was at the records office when I was there and it is my recollection

that he said it was 11. He may have actually said it was 16. On the other hand he might have pointed out that I did drop 11 hours on one day and tell me that was in excess of 10 and therefore anything further was not significant. But it is my best recollection that Mr. Trupp told me I dropped 11 hours.

JAMES GREEN

DIRECT EXAMINATION

C.T., 789:5-7.

At my hearing on July 11, 1963, before the JPLRC at Pier 24, I was told that I had paid my pro rata late ten times. I admit paying late eight times.

CROSS EXAMINATION

C.T., 789:22-27.

At the hearing at Pier 24 I asserted that the record of my late payments was erroneous and that this was because the machine at the union was out of order so that the recordings of my pro-rata payments were put in the wrong column. I was told that I could go to the union dues office to go into these matters more fully and to get the correct facts established there. I decided not to do so.

MACK HEBERT

DIRECT EXAMINATION

C.T., 795:11-12.

. . . My time book, which I took with me and showed to them, showed that I did not drop any hours.

CROSS EXAMINATION

C.T., 796:23-25.

. . . I recall that at the end of the discussion it was agreed by the PMA and the Local 10 officials that I had dropped either 12 or 18 hours. I cannot now recall which figure was used.

C.T., 797:27-29.

Some time after I had been to the Investigating Committee meeting I heard that Asher Harer was reviewing records of B men on LMO and went into see him.

C.T., 789:3-10.

I remember that I did talk to Asher Harer about my LMO situation. I do not know now whether I had my time book or other records when I talked to Asher Harer. I do recall that he and I went over a work sheet. At the trial I have seen Exhibit 475. This looks like the sheet that we looked at. I recall that we talked about sign-in sheets and I was told that they were not available.

CONWAY T. HUDSON

DIRECT EXAMINATION

C.T., 799:8-10.

. . . After my hearing at Pier 24, I spoke to Mr. Edwards of PMA at the records office. He checked my records and reduced the hours dropped to nine.

CROSS EXAMINATION

C.T., 799:28-800:2.

. . . I do not now recall what the facts were that I was able to present to Mr. Edwards. However, he did listen to my statement as to the facts, and he reviewed them by consulting the documents that he had before him. He might have made a phone call to check up on some of the facts, but I do not recall. After our discussion, he said that I had dropped 9 hours in the month of October and that it was correct that I had dropped no hours in the month of September.

HENRY IMPERIAL

CROSS EXAMINATION

C.T., 801:24-802:13.

In 1964 I testified at the Unemployment Insurance proceeding. At the trial, my testimony was read, as follows:

"Q. Mr. Imperial, did I understand you to state you received a copy of the rules? [that were part of the 1958 rules, Exhibit 2 in the court proceeding]

"A. I did not receive all of the copies. I received a few pages of the rules.

"Q. You received a few pages of the rules. Ok. Now you have also seen the rules posted on the bulletin board down at the hall?

"A. Yes.

"Q. And any of the B men who cared to look could have seen then there on the bulletin board; wouldn't that be true?

"A. Yes.

"Q. Now you say Mr. Edwards is the one who told you about the late payment of your pro rata as being cause for deregistration?

"A. Yes.

"Q. Okay; now, you were late in the payment of your pro rata 13 separate and distinct times; isn't that right?

"A. Yes. I believe that is the amount of times."

This is my testimony here.

WILLIE JENKINS, JR.

CROSS EXAMINATION

C.T., 804:8-23.

I went to the records office, I think, July 19, 1963. I saw Mr. Edwards and Tommie Silas. We went over the work sheets that they had. It was my recollection that the facts that they presented when they were checked out by Mr. Silas or Mr. Edwards indicated that I had no more than one hour of LMO violations during the period that I was checked.

At the trial I was shown Exhibit MV, which consists of two union work sheet forms covering my record for the months of April and October, 1962. It was pointed out that the second sheet of Exhibit MV indicates that I was not signed-in on the board at any time during the month of October, 1962. I was told that the record showed that the work was very heavy during this period of time. During periods when work was very heavy and I knew that I could get a job whether or not I was signed-in on the board, I sometimes did not sign-in and went to the hall during the latter part of the dispatch period and would volunteer for work after all of the men who had signed-in had been dispatched. I cannot now recall whether this subject was discussed when I was at my hearing at Pier 24.

CHARLES J. JOHNSON

DIRECT EXAMINATION

C.T., 805:10-11.

. . . At the records office after my deregistration, I was told that my hours were all right by Carl Smith, an official of Local 10.

CROSS EXAMINATION

C.T., 806:2-8.

I recall that I went to the records office. I do not recall whether I had my time book with me at that time. I recall that the JPLRC officials reviewed some documents. I deny that I was shown any documents, either work sheets or master sheets. I do not recall what the officials told me when they had listened to my story and reviewed the documents they had. I do not deny that they said that my record still showed that I had dropped 14 LMO hours.

C.T., 806:24-28.

The conversation that I have been testifying about may be with respect to a conversation I had with Carl Smith earlier.

This might have been a day or so after my Investigating Committee appearance in February. I do not deny that my recollection as to my conversation with Carl Smith may be with respect to a period of February, 1963.

C.T., 807:9-10.

I remember that it was Carl Smith who told me of my situation at the time of the Investigating Committee meeting.

C.T., 807:21-28.

. . . On many days when I had not signed in, I went out on a volunteer basis when work was very heavy. I would come to the hall late on days when I knew ahead of time that the work was going to be so heavy that I did not need to sign-in to get dispatched. The second way was to go out after I had explained to the dispatcher that I was not on the board and he told me that I could "come up on my correct hours" or could "go out on my correct hours". I do not know how many times I went out in this second way. When I got my dispatch slip in this way, the dispatcher told me to sign-in at my correct hours for the next day.

JAMES WILLIE LANKFORD

DIRECT EXAMINATION

C.T., 812:9-10.

. . . On many occasions I was left off the master sheet and the dispatcher told me to go out on my hours.

CROSS EXAMINATION

C.T., 813:4-8.

At the trial I was shown the work sheet that was used to check my LMO violations, specifically the work sheets identified as Exhibits 469 and MZ(1) and (2). I have looked to see whether the notations on these sheets in any way relate to occasions when I was left off the master dispatch sheet and the dispatcher told me to go out on my hours. I cannot find that they do.

C.T., 813:12-29; 814:7-10, 15-17.

I have been shown Exhibit MZ(1), which shows that I was not on the board on Wednesday, April 18 or on Monday April 23 or on Tuesday April 24, 1962, and that I was not charged with dropping hours on any of those days. Exhibit MZ(2) shows that I was not on the board on Saturday May 5 or on Sunday May 6 or on Monday May 7 or on Tuesday May 8, and that I was not charged with dropping hours on any of those days. This exhibit further shows that I was not on the board on Friday May 18 or on Monday May 21 or on Tuesday May 22, and that I was not charged with dropping hours on any of those days. These are the only days when I was not shown as being on the "board", i.e. the master dispatch sheets.

Exhibit MZ shows that I was charged with dropping hours on other occasions when my work number was on the board. This exhibit shows:

> (1) I dropped 14 hours by not taking average on the 16th of April.
>
> (2) I dropped 11 hours on April 20, when I was signed-in and was dispatched at 570 hours on the day after I had been signed-in and had been dispatched at 573 hours and worked 8 hours.
>
> * * *
>
> (4) . . . I did add six hours in other similar situations. Thus, on Wednesday, May 16, 1962, after not being on the board for two days, I came in and signed-in by taking average.
>
> * * *

. . . The work sheet shows that the charges of dropping hours on these four days do not involve days on which I was not on the board. I have no evidence to contradict the work sheet.

JOHN T. LEGGETT

CROSS EXAMINATION

C.T., 817:10-22.

I cannot now recall how many times I was left off the master dispatch sheet or the reasons why this happened. I cannot recall if this ever happened during the months I was checked for LMO because I did not keep any records of when I was left off the master dispatch sheet. On some occasions that I was left off the sheet, I failed to get to the complaint window in time to get it entered. I do recall that there were incidents in which I was left off the master dispatch sheet and brought this to the attention of the dispatcher at the complaint window during the time that that window was open for service during the period I was checked for LMO violations. I recall that from time to time it did happen that I was left off the master dispatch sheet and that I took this up at the complaint window and got my work number entered at the right place but I do not recall the number of times or the dates.

C.T., 817:33-818:3.

. . . In all of the cases when the dispatching hall was cleaned out and I was dispatched without being on the master dispatch sheet, the dispatcher would tell me when giving me a dispatch slip, "Sign-in on your correct hours for tomorrow."

CLEO LOVE

CROSS EXAMINATION

C.T., 820:7-15.

While I was at the records office, I talked to Mr. Edwards or Mr. Trupp and somebody from Local 10. I do not deny that they had one or more work sheets there. I do not remember anything about my meeting at the records office, except that I met with someone and went over the facts and we reached the conclusion that I had dropped less than 10 LMO hours. I do not deny that the man there helped me to analyze the situation

and to gather the facts that would show that I had dropped less than 10 hours of LMO. I do not deny that we went over the work sheets or that I had my time book with me.

C.T., 820:20-23.

I remember that during May or perhaps April, or perhaps before, in 1963, I went into the records office to check in on my LMO situation. I cannot now recall why I decided to make this check. I cannot recall if I learned that Asher Harer was making a check on LMO.

PAUL MAY

[This plaintiff died prior to the trial.]

C.T., 823:30-32.

. . . The same Exhibit LL shows that none of these four meetings of the JPLRC was any mention made by Paul May or anyone else of any medication or sickle-cell anemia pain.

WILLIE C. MERRITT

CROSS EXAMINATION

C.T., 826:25-28.

There was no claim at any time that I had dropped any LMO hours. The record that they had checked for me showed that I had not dropped any hours of LMO. I understood the LMO rules and had no difficulty in complying with them so that I did not drop any hours.

DONALD NAU

DIRECT EXAMINATION

C.T., 828:10-13.

. . . I did not understand the requirement of taking average if hours were less than average. I thought that everyone who flopped was to just add six hours to their time.

CROSS EXAMINATION

C.T., 828:27-28; 829:2-14.

I do not now recall going over my record with Asher Harer. I understand he has testified that he reviewed my records. . . . I do have a recollection that I talked to somebody at the records office between the time I was before the Investigating Committee and the time that I received the letter notifying me that I was being deregistered.

I have reviewed, on the witness stand, the work sheet that I have been told that Asher Harer used. The work sheet showed that I flopped on August 4, on August 6, on August 10, on August 16, and on August 25, 1962. It also showed that I signed-in on average on August 8, 1962 after my flop on August 6 and that I failed to sign-in for August 7. I had been on the board at 281 when I flopped on August 6 and by taking average on August 8, I was at 295. On the other four occasions when I flopped I only took six hours instead of taking average. The sum of the difference between taking six hours or taking average on these four occasions adds up to 28 hours.

C.T., 829:15-25.

I cannot explain why I took average on the one occasion that I flopped and did not take average on the other occasions when I flopped, except that I possibly was confused between Rule 2 in the June 17, 1959 minutes of the JPLRC (attached to Exhibit N) and Rule 10 of the LMO rules (attached to Exhibit N). I do not claim that I read these rules at any time during August, 1962. I do not remember. I did not take average one day because I had read one rule and not fail to take average another day because I had read another rule. Actually I do not recall that I read anything in Exhibit N between a month or so after I first received it in 1959 and the time when I was deregistered in 1963.

MANUEL NEREU, JR.

CROSS EXAMINATION

C.T., 831:3-18.

Some time after that meeting, I heard that Asher Harer was checking on records as to LMO hours. I went in to see him at the JPLRC records office. He and I looked at some work sheets. At the trial I was shown Exhibit 474. This looks like the sheet I talked about with Asher Harer. It shows that I had signed-in and was put on the master dispatch sheet for October 30, 1962 at 256½ hours and that I worked 83 hours between that date and November 8, inclusive. He said that this meant that I had to sign-in at 339½ on November 9. I signed-in at 316 on that date, according to the master dispatch sheet. Thereafter, as I worked from day to day, I added my hours worked to the hours figure of 316, and I signed-in and was dispatched on the basis of this hours figure. I have no evidence that there is anything incorrect about the figures on the master dispatch sheets, the work sheets, or the PMA records from which the figures on the work sheet were transcribed, or that there was any error in transcribing them onto the work sheet. I do not know one way or the other but I have no records to suggest there is anything wrong with the figures relied upon by the JPLRC.

THOMAS NISBY

CROSS EXAMINATION

C.T., 832:12-29.

I did not file an application to promote from B to A. I did not file a request for a hearing, and so I did not have a hearing in the first part of July, 1963, along with the other B men. I did not file a grievance attacking my deregistration at any time. I learned that other B men who had been deregistered for reasons other than for lack of availability were bringing a lawsuit, and I joined in it.

As far as I know, I am the only plaintiff whose deregistration occurred only because he failed to meet the 70% availability rule. Some time before 1963 I had been given a notice that I had been deregistered for lack of availability. I filed a grievance attacking my deregistration and I had a hearing before the Joint Port Labor Relations Committee. At that time I was reinstated but was put on probation. I was sent a similar notice of deregistration for poor availability in the spring of 1963, and I appeared at a JPLRC hearing in April, 1963, in response to that notice, Exhibit CI.

I did not deny that I was not available for longshore work for a full period of 30 days and was not available for longshore work for 70% of the time over a longer period. The JPLRC rejected my request to be reinstated to registration. I did not file any further request for a hearing.

LEROY J. PROVOST

CROSS EXAMINATION

C.T., 834:1-5.

I cannot recall now whether I talked to Asher Harer or not, but I do disagree with his note that I did so. At the trial I have seen my work sheet prepared by Asher Harer. I note that I was charged with dropping 11 hours because of a failure to take average after not being on the board on Saturday, August 19 or Sunday, August 20.

C.T., 834:24-30.

I cannot explain now why it was that I did not go to the records office after I was told at Pier 24 that I could take my time books or any other material I had and meet with the joint representatives of Local 10 and PMA at the records office to see if there were any mistakes as to my LMO hours. I remember that I was told I could go to both places. I think I did not go because I knew I was shown to have dropped over 11 hours in any event.

EDWARD REED

[This plaintiff died prior to the trial.]

C.T., 836:2, 11-13.

Exhibit LK shows that his LMO violations were reduced from 13½ hours to eight hours when he was at the records office of the JPLRC about a week after the July 10 hearing.

JEREMIAH RICHARDS

CROSS EXAMINATION

C.T., 839:1-16.

. . . All that I know is that I asked that someone sign-in my work number for 141½ hours and square it off.

I cannot explain now my being signed-in at 141½ hours for the 16th, since I was not on the board for the 15th and I was not carried over automatically from the 15th to the 16th. Hence, either I, or someone whom I designated, must have signed me in at 141½ hours for the 16th, or I spoke to the dispatcher and he put me on the master dispatch sheet at 141½.

C.T., 840:17-19; 22-24.

[at Pier 24 on July 11, 1963]

. . . I did say at that time that I had not been able to check my hours. I said this even though I previously had spoken with Asher Harer at the records office many weeks earlier. . . . I do not deny that I spoke to Asher Harer, person to person, at the records office and went into these details then, but I do not remember doing so.

C.T., 841:3-7.

. . . As I now recall, I was then told by Messrs. Trupp and Silas that I dropped only 10½ hours of LMO because of the October incident. I do not recall exactly what happened. I do not deny that I might have been told that the charges that I had dropped hours were reduced to 20.

C.T., 841:13-14.

. . . The JPLRC found that I was dispatched to a bum job in April, 1962.

C.T., 841:15-16, 20-22, 27-31.

I remember that I was present at a B men's meeting in late 1962 or early 1963. . . . Several of the union officials spoke; I think I remember Chester, Rohatch, Kearny and Bridges as being among the people who spoke. . . . There was talk about the standards that would be used. It is my recollection that the conclusion I had with respect to this was that whatever rules were agreed to between the union and the PMA would be the rules that would determine who would be promoted and who would be deregistered.

C.T., 842:9-10.

I remember calling the union hall on one occasion and speaking with Asher Harer.

C.T., 842:24-27; 843:6-9.

I do not have an explanation as to the notations by Asher Harer and that he checked me for my October LMO record and found that I had dropped at least 13 hours in four weeks and had dropped more than 10 in each of two months. . . . I do not recall talking about 43½ hours with Asher Harer. The only explanation might be that my recollection that I talked to Tommie Silas about 43½ hours is wrong and that I actually talked to Asher Harer about 43½ hours. I cannot be certain at this time.

ALBERT ROBERTS

DIRECT EXAMINATION

C.T., 846:5-11.

At my hearing on July 11, 1963, before the JPLRC at Pier 24, I was told that I had paid my pro rata late twelve times and that

I had dropped thirteen and one-half hours in December 1962. I admit the late payment of pro rata. I have no explanation for the charge of dropping hours. I have my time book for December 1962, but it is not sufficiently definite to enable me to dispute the Committee's conclusions.

CROSS EXAMINATION

C.T., 846:29-847:3.

I do not recall exactly what happened at that time. I did have my time books with me, but they did not have any information in them that indicated that the information on the work sheets being used by the committee was wrong in any respect. There was a review of the arithmetic and the procedures. As a result, instead of reducing the number of hours that I was charged with dropping, the re-check showed that I had dropped 15½ hours.

C.T., 847:12-14.

I still have my time book and submitted it at the trial. It does not indicate anything to suggest that the conclusions by the JPLRC were wrong with respect to my LMO record.

WALTER L. ROBINSON

CROSS EXAMINATION

C.T., 848:20-22.

I do recall that I did not feel I had dropped that many hours and believed it was more like 20 hours. I was told that I could go to the records office to re-check this.

C.T., 849:24-27; 850:10-11.

I remember that I spoke to someone in the union office after my appearance at the Investigating Committee. He had some work sheets that looked like the sheet that is marked Exhibit 495,

which I have seen while on the witness stand here. . . . I do not know what period of time was considered by the union Investigating Committee or by Asher Harer or by the JPLRC.

ALFRED STRAUGHTER
CROSS EXAMINATION

C.T., 853:20-24.

I received a letter dated June 17, 1963 telling me I had been deregistered. I did not request a hearing, although I remember reading that I was entitled to get a hearing if I requested one. I did not have a JPLRC hearing in July and I did not file a grievance letter dated July 27, 1963, or any other grievance letter in July.

C.T., 853:27-30.

On April 23, 1963 I had been at another hearing before the Joint Port Labor Relations Committee. It related to availability. I was asked to submit some medical information to support my claim that my lack of availability could be excused. I failed to submit it.

C.T., 854:2-3.

. . . Nor do I recall at this time why I failed to submit the medical evidence that I said I would submit.

THEODORE TOLLIVER
CROSS EXAMINATION

C.T., 855:29-32.

On that date [July 19, 1963] I did go to the records office. I met with the representative of PMA and of the union. I think Mr. Edwards and Mr. Silas were there. I do not recall what occurred except as I testified on direct examination.

WILLIE J. WHITEHEAD

DIRECT EXAMINATION

C.T., 857:8-10.

. . . I have no recollection of dropping hours and I do not have my time books to compare with the worksheets of the Committee.

CROSS EXAMINATION

C.T., 857:21-24.

. . . The master dispatch sheets were shown to me and, when I asked to see the sign-in sheets, I was told they were not available. I do not recall if I looked at the work sheet regarding my LMO record.

C.T., 858:7-14.

I do not deny the accuracy of the report, shown in Exhibit LF, that indicates that the PMA and the Local 10 representatives still agreed, after my appearance at the records office, that I had 23½ hours of LMO violations. I make no claim that this conclusion is contrary to the facts that they were studying when we went over them at the records office on Wednesday, July 18, 1963. I do not deny that an LMO work sheet was presented to me at the records office. I make no claim that I was able to show at that time that there was anything erroneous on the work sheet.

C.T., 859:2-5.

. . . I do know now and I knew in 1963 that if I had either flopped or not been on the board on April 14th, I was required to take the average when I next signed-in unless I was then above average, in which situation I would have added six hours.

GEORGE R. WILLIAMS

CROSS EXAMINATION

C.T., 860:23-24.

I still remember that when I was at Pier 24 I raised a question about the sign-in sheets and that I was told that they were not available.

C.T., 861:3-4.

I do recall that I did go to see a record checker in the records office. I do not know his name.

C.T., 861:14-862:22.

I do not now recall what was said when I talked to Asher Harer. An attorney for a defendant read from the Harer work sheet (Exhibit 497) that he charged me with dropping six hours because I flopped on July 31 and signed-in at the same hours figure on both July 31 and August 1 and did not add six hours between July 31 and August 1 for the flop. I make no claim that I didn't flop or that I did add six hours. I do not remember. I have no records of my own.

Exhibit 497 also shows that Harer charged me with dropping 4½ hours on the 2nd of August on the basis that I had signed-in at 248½ hours on the 1st of August and was dispatched at 248½ and worked 8¾ hours on that day and only added 4½ hours. I make no claim that I didn't work the 8¾ hours shown. I do not remember. I was further shown by an attorney for the defendants that Asher Harer said I dropped 1¾ hours on the 3rd of August because I worked 9¾ hours on the 2nd of August after signing-in and being dispatched at 253 hours and thereafter signed-in and was dispatched at 261 hours on the 3rd of August. I also was shown that this record shows that on the 7th of August I signed-in at 285 hours on the day that the average was 287 and that I was required to take average on that date. I do not now deny the accuracy of the figures shown on these work sheets or the analysis of them prepared by Asher Harer because I have no records of my own to compare with the worksheets.

I know that it was my responsibility to be on the master dispatch sheet at the correct hours. I do not deny that I was on the master dispatch sheets at the hours shown on Exhibit 497. I cannot deny or admit that I was signed-in on these hours because I do not know. I do not have my time books and the defendants do not have the sign-in sheets.

I do not recall telling the committee at pier 24 on July 10, 1963 that I was always at the hall at 6:00 a.m. in the morning, as is indicated on Exhibit JJ. However, I was usually at the hall at 6:00 or at least before 6:30. It is my recollection that I usually checked the day's master dispatch sheet at this time to see whether it showed my work number at my proper LMO hours figure. I knew that between 6:00 and 6:30 a.m. I could go to the complaint window and get my work number placed in the group of work numbers at my proper LMO hours figure whatever might be the hours figure at which my work number was put on the day's master dispatch sheet when it was first made up. I knew this was true whether my work number was in the wrong place because of my mistake or because of the mistake of somebody who was at the hall who put my name and number on the sign-in sheets on the basis of a telephone call by me or because of a mistake of a partner or friends in signing me in or because I signed myself in at the wrong hours. I knew I could get the correction made.

C.T., 863:26-28.

. . . I cannot now explain why my hours were not increased from day to day on the basis of the number of hours that I worked and giving consideration to my flop.

INTERROGATORIES

C.T., 879:1-10.

Interrogatory No. 88: In his affidavit Stanley Weir stated with regard to the agreement between ILWU and PMA from June 15, 1959 to June 15, 1960: "I was outspoken in my opposition to this agreement because of its immediately injurious effects on the working conditions of the Class 'B' men." State each and every material fact of which you are aware that would tend to establish that the contract had any such effect.

Answers: Each of the 44 plaintiffs who answered the interrogatories answered, "The B men would do the heavier work

without the protective work rules which earlier applied, while the benefits went to the older men, all of whom had Class A registration."

C.T., 895:1-32.

Interrogatory No. 169: Do you recall receiving any information as to the availability of the § 13 grievance procedure? What information do you recall receiving? In what form?

Answers:

A. Winters	Yes. In the form of letters from the Joint Port Labor Relations Committee.
P. Fountaine	Yes. I remember receiving or seeing a written document of some kind concerning Section 13.
J. Green	I recall hearing about Section 13 at a union meeting but I do not recall the details.
W. Jenkins	Yes. In various documents provided to me.
R. Fleeton	Yes. In written documents of some kind.
L. Lacy	I recall hearing about Section 13 but I cannot recall when I learned about it and under what circumstances.
W. Jones	Yes. I remember seeing something about Section 13 in a document which may have been posted in the dispatch hall.
J. Richards	In the correspondence from the Joint Port Labor Relations Committee.
A. Roberts	In the correspondence from the Joint Port Labor Relations Committee, which is in my personnel file with PMA.
M. Kennedy	Yes. In the correspondence from the Joint Port Labor Relations Committee, copies of which are in my personnel file with PMA.
W. Palmer	Yes. I received this type of information in a form of my pay check.
A. Hughes	I do not recall receiving any information about Section 13 until after I was deregistered. I heard about it from other deregistered longshoremen.
E. Gums	Yes. In communications from defendants.
M. Luppi	Yes. In the form of documents from the Port Committee.
E. Dunlap	Yes. This information was contained in the correspondence sent to me.

DISPATCHERS

DIRECT EXAMINATION

C.T., 915:26-31.

. . . If a man "in the hall" for the volunteer dispatch is not dispatched, he can sign-in for the next day at his correct accumulated LMO hours; this has the effect of correcting any mistake by which his work number was at too low an hours figure. The sign-in for the next day has this effect because a man drops hours only if he takes a job while on the board at too low an hours figure.

CROSS EXAMINATION

C.T., 933:2-15.

Some of the dispatchers testify: Normally taking any given 1,000 entries on the master dispatch sheets, I would estimate that there would be on the average no more than 30 mistakes that were brought to the attention of the dispatchers. Of that number, perhaps one of them would be due to a dispatcher's erroneous transcription of a clearly recognizable number from the sign-in sheets. Ten of them would probably be due to the dispatcher's erroneous reading of an unclear entry on the sign-in sheet. The remaining 20 would be due to the fact that the man himself or someone acting for him had placed the wrong work number or the wrong hours figure on the sign-in sheet. The wrong number or figure might have been written on the sign-in sheet with intention, through negligence or carelessness or mistake, or as a result of pure error, or by reason of making the entry before the day's work was finished on the basis of the man's erroneous estimate as to the hours to be worked during the day.

RE-DIRECT EXAMINATION

C.T., 948:31-33.

. . . The dispatchers have no way of knowing what the man's correct LMO hours are and have to take the man's word for it.

C.T., 949:11-13.

. . . The record checkers would be the ones to check the records to see if the man had told the truth and if the entry on the master dispatch sheet was a correct one.

C.T., 950:20-23.

. . . Some of these dispatchers testify further: I would estimate, on the average, out of a hundred entries on the master dispatch sheets one of them was a mistake that was due to poor handwriting on the sign-in sheets.

C.T., 951:1-19.

The LMO procedures have been followed for over 20 years. They have applied to both the A longshoremen and the B longshoremen. I know of no facts to suggest that the number of errors made by the dispatchers in preparing the master dispatch sheets for the B men during the 1962 period when the B men's LMO records were checked were any greater or less, in proportion to the number of men and the length of time involved, than the number of errors made by the dispatchers during that period in preparing the master dispatch sheets for the A men. Furthermore, with respect to the period following December 31, 1961, as to the B men who came into the industry in 1959, I know of no fact that would suggest that the errors made in signing in by the longshoremen on the B list during the period from January 1, 1962 through June 17, 1963 were any greater or any less, in proportion to the number of men, than the similar errors made by the men on the A list during that period or the period from 1952 to date. There are no facts that suggest in any way that the B men were told during the period of January 1, 1962 through June 17, 1963 "to come up on your correct hours" or "to go out on your correct hours" any more or less frequently, in proportion

to the number of men and the time involved, than were the A men so told during the period from 1952 to date.

RE-CROSS EXAMINATION

C.T., 953:1-7.

. . . I believe that I was able to correctly transpose most of them to the master dispatch sheet, because if I misread them I assume the men would have brought the errors to my attention. However, I have no way at the present time to determine how many mistakes were made in transposing numbers from the sign-in sheets to the master dispatch sheets, if any, which were not brought to my attention.

MIKE SAMADUROFF
DIRECT EXAMINATION

C.T., 954:21, 25-31.

I was at the B men's meeting of July 10, 1959. . . . I also explained that each man should get a time book and keep a record of his hours worked and that each man was responsible for signing in at his correct hours.

Other union officials explained some of the penalties, particularly those covering pilferage and fighting. The B men were told that there were penalties for violating the rules as to the LMO system.

JAMES D. EDWARDS
DIRECT EXAMINATION

C.T., 956:12-14, 20-23.

In both situations described above, the response that we most frequently heard from a longshoremen who was charged with dropping LMO hours was, "I did not intentionally violate the rules." . . . If the JPLRC were to have made determinations as to intent, in my opinion we would have introduced subjective factors and would have left the committee open to charges of favoritism or discrimination.

C.T., 956:27-957:2.

I made each determination as to whether or not a man had dropped LMO hours solely on the basis of the facts in the records as to each day on which the man took a dispatch slip at the hall

during the period of the regular dispatching of men from the master dispatch sheet. My experience with the other record checkers, in making our studies and in reviewing the charges with the men involved, is that all of the other record checkers made decisions on LMO charges exclusively on the basis of these facts in the records, as I did.

C.T., 957:7-14.

A man drops hours when he takes a dispatch slip while on the master dispatch sheet at an hours figure below his correct accumulated LMO hours. If he does not take a job while he is too low on the board, he will have no violation if he gets on the board at his true hours before he takes the job. If he corrects his situation before he picks up a dispatch slip either by getting the correction made on the master dispatch sheet for the current day or by signing-in at his correct accumulated LMO hours for the next day, he has no violation.

N.L.R.B. TESTIMONY OF JAMES ROBERTSON

[Exhibit J]

490:5—490:18; 490:22—491:9.

Q. Could you summarize the principal differences between the status of a limited registration longshoreman or a Class B longshoreman, and, on the other hand, a fully registered longshoreman, or who we for short call Class A longshoremen?

A. Well, one of the ways I have always used to describe it, of course, is the type of security that the man has.

A Class A fully registered longshoreman is similar to a steady employee. He is like a Civil Service worker for the Federal Government that has served his tenure and he has got his job.

A Class B, or a limited registered man, is under probation proving himself. He is similar to a man that has been accepted by the employer but working toward getting his tenure, just like they do under Civil Service.

* * *

Q. What is the general length of time that a fully registered longshoreman remains in the industry?

A. For the most part the fully registered longshoreman remains in the industry his entire working life. until he dies,

retires under the pension plan, or is promoted to another job out of the bargaining unit.

Q. Do many of the men who are fully registered men leave their jobs and take other employment of other types on a voluntary basis?

A. I have known cases of this, but it is very, very minute, a very small number.

The jobs are too good to leave.

520:20—25; 521:22—522:5.

Q. (By Mr. Ernst) Mr. Robertson, could you state the characteristics of employees that the PMA wishes to have deemed should be considered in its efforts to get the best qualified men to be decasualized registered men on the Pacific Coast?

A. Well, obviously, one of the first is physical characteristics the ability to do the work. . . .

We would like him to be intelligent, obviously, because we have certain skilled jobs that we would like to promote him to and this requires some intelligence.

We would like the man to be basically honest; be a good member of the community; pay his bills.

In other words, we feel that because of the conditions we have on this water front we can demand high standards, and we demand the highest standards we can, that we can get the Union to agree to.

REFEREE TESTIMONY OF ANTONIO S. CAFETEIRO

[Exhibit 10, January 17, 1964, morning]

30:14—23; 32:7—10; 32:24—33:4; 33:12—23; 36:6—9; 36:16—19

GORDON: Yes. And the question is, of course, as to the witness's understanding that Sunday was not a flop day. Is that correct?

A. Because on Sunday when they flop, they used to put note on the board.

Q. Will you explain that?

A. On Sundays, when they used to flop, they put a note saying that we're going to flop on Sundays and—during that time there

was a note on the board saying that they were going to pull the hours, or something like that. . . .

* * *

Q. [Rideout]: . . . But I wanted to know, was there any specific time, and any individual of authority that ever told you that you would not flop if you did not work on Sunday?

A. No.

* * *

Q. (By Mr. Gordon) What did the bulletin say, in substance, that you have testified to? Now, pay attention to my question. I'm trying to keep it plain so you understand it. You say a bulletin was posted? A. Just more or less, a note.

Q. All right. What would such a note say, that was posted on a Sunday?

A. Well, I can't tell you exactly what it say. I know it said that they would pull the board.

* * *

Q. And is it correct that your experience was that when such a note appeared, you were guilty of a flop, if you didn't remain so that you could be reached?

A. Yes.

Q. Is it correct that when such a note did not appear and you were passed, you would still not be guilty of a flop?

A. Well, I don't know. According to them, I don't—

Q. I'm asking your experience. Listen to my question. I'm asking you now what your experience was. I'll ask you again. When there was a note, was it your experience that if you were passed on a Sunday, you were not guilty of a flop and you weren't flopped?

A. No, because most Sundays I never did go over there, . . .

* * *

Q. (By Mr. Gordon) One question, what reason did you have, Mr. Cafeteiro, when you signed in on that Sunday, not to square off? A. What reason?

Q. Why, didn't you square off? . . . Had you understood that Sundays was a flop, would you have—

A. I was thinking, taking for granted that I wouldn't flop on Sunday, on that Sunday.

REFEREE TESTIMONY OF STANLEY WEIR

[Exhibit 10, January 13, 1964, afternoon]

50:4—15

A. All right. I observed among others that I was getting very anxious to get an A book in 1960. Other men indicated to me the same feeling. In 1959 and '60 the union investigating committee had begun to process B men for upgrading to A status, meaning union membership and A registration. They processed a little over 300 men and stopped it. With that processing, they had stated that they would upgrade 163 men and every month thereafter would upgrade one man for every man, a man to retire, or never less than 15. The contract that came into effect in 1960 auto mechanics [sic] [automation] contract or modernization contract stopped or froze registration on the West Coast so that opportunity to become A men was frozen also.

54:21—55:11; 56:9—10, 18—21;

. . . I believe late in March or early in April another attempt was made to deregister me. I received a deregistration notice late March or early in April saying that, "You have not maintained availability of 70% of each 30-day period." And I kind of scratched my head. I thought they were accusing me of the time that I had been of injured on the waterfront as a result of steel landing on my foot. So I went to the record checker's office. I asked Asher Harer (phonetic) to do a time check around which time I was hurt. I said, "Is that the time? Let's find out for sure." He phoned up the PMA at 16 California Street while I was sitting there, and he talked to a Mr. Hall, and Mr. Hall said to Mr. Asher Harer, "It's for the period of November 6th until after the 1st of the year." Well that was the period in which I was off injured. I said to Mr. Asher Harer "Stop everything." I went right to 16 California Street in person. When I got there

I talked to Mr. Edwards, and Mr. Edwards said, "No, sir, it is not. You were injured in that period, and we know about that."

* * *

It turned out that when I went to the hearing on that particular charge, . . . I was told that my situation wasn't too bad, to keep it clean and notify them of any time I would take off in the future, and everything was all right.

[Exhibit 10, February 4, 1964, afternoon]

52:28—53:2; 53:21—54:12; 55:6—10

Q. You drafted a letter dated July 27 which you sent around to all men that had been deregistered, is that right?

A. I did.

* * *

Q. . . . Tell me about that letter.

A. All right. I wrote a letter which was for my appeal to my deregistration, and I showed it to several men, and several men helped me draft it, and it acted as a model appeal letter for any and all that wanted to use it, but I did not send that particular letter around. Later on after the hearing in July and after the confrontation at the union hall, I drafted another letter with the aid of the steering committee longshore jobs defense committee which we sent along to all the members of the jobs defense committee.

Q. You talked about last the longshore jobs defense committee?

A. Correct.

Q. What sort of an organization is that?

A. An organization of men who were framed out of their jobs from Local 10 and deregistered by Pacific Maritime Association.

Q. And you are the founder of that group, sir?

A. No, I am not the founder. I am a founder.

Q. Who are the other founders, sir?

A. It's hard to remember at this late date.

* * *

MR. WEIR: To the best of my ability it was done on a very informal basis and involving quite a number of men, 82 who appeared. There has been some 19 or 20 men. I can't remember which 19 or 20 after eight months. That 19 or 20 became 60, and who the first group were, I can't tell.

59:8—20; 60:4—61:12; 61:17—24; 62:15—27; 63:11—13

MR. MUNTER: Q. Mr. Weir, you previously testified that you composed a letter with the aid of some others that you sent around to various claimants together with a mimeographed form and suggested that they send it in to the PMA, is that right?

MR. WEIR: A. No, I didn't testify to all of that.

Q. Is all of what I said true?

A. All of what you say is true.

Q. Okay.

A. With — let me correct one thing. Not send in to the PMA. Send in to the Joint Labor Relations Committee.

Q. Now in that matter you suggested to the men that they were claiming discrimination, is that right?

* * *

MR. WEIR: Let me answer the question to the best of my recollection. The letter states that the signee wants another hearing due to the fact that he has been discriminated against, and I don't think it's because of section 13 in the letter but because simply due process, or lack of due process is a form of discrimination. I believe that is the sense of the letter since I am unable to see it now, and I wrote that, something along those lines.

MR. MUNTER: Q. Did you have the help of the steering committee on that?

MR. WEIR: A. Did I have the help of the steering committee when I wrote that?

Q. Yes, or did you write this letter by yourself?

MR. GORDON: Same objection — remote.

REFEREE: You may answer the question.

MR. WEIR: I think I wrote that by myself.

MR. MUNTER: Q. In one letter you wrote, and this one is dated July 27, 1963, you state:

> You recall that our first meeting last Thursday night we decided to send the Joint Labor Relations Committee another appeal based upon the Discrimination Section 13 of the Master Contract.

Do you recall that?

MR. WEIR: A. No, I don't recall that per se. Is that a letter from the committee?

Q. This is a document that has been marked as Exhibit E-8 for identification [before the referee], and it's a mimeographed form dated July 27, 1963, and I'll show it to you and see if it refreshes your recollection. The mimeographed side, the other is a letter by one of the individual claimants, Mr. Referee (hands document to Mr. Weir).

A. That's it. That is the correct one.

Q. You wrote that, sir? A. Yes.

Q. In there you say that at our meeting last Thursday night you decided upon additional appeal based upon Section 13 of the Master Contract? A. Mm—hmm.

Q. And I take it you are referring to Section 13.1 set forth in the grey booklet?

A. That is correct.

Q. Now the section refers to discrimination either in favor of or against any person because of membership in the union, activity for or against the union or absence thereof, or race, creed, color, national origin, or religious or political beliefs. Now my question to you, Mr. Weir, is do you feel that you and just for yourself first sir, have been discriminated against because of your race? A. No.

* * *

Q. All right. Do you feel you have been discriminated against because of membership or non-membership in the union?

A. Yes.

Q. All right. Let me break that down. Do you feel you have been discriminated against because of membership in the union?
A. No.

Q. Now then I take it you feel you have been discriminated because of the fact that you were a non-member of the union?

A. That's correct.

Q. Okay. Now how many B men were there approximately in your group? By that I am talking about that went in with you in 1959, whenever it was.

A. 700 odd.

* * *

Q. All right, were any of them members of Local 10?

A. No.

Q. Now when I asked you if you felt you had been discriminated against because of non-membership in the union, were you referring to non-membership in Local 10? A. Yes.

68:28—69:10

Q. All right. Based on that statement you have — your only knowledge would be that they were granted Class A registration prior to being admitted into the union?

A. No, that isn't the sense of which this whole thing took place all along. All along it has been considered through union meetings and reports to B men at B men meetings and in the bulletins, that membership in the union, full membership, no longer probationary members of any sort, and A registrations were something that one obtained simultaneously. You could not have one without the other.

DEPOSITION TESTIMONY OF STANLEY WEIR

[Exhibit LZ]

[90]

Q. That raises one question. Was there any place where you ever worked where you had a system of a dispatch hall working like up here where a man came down and put down his number and

[91]

hours as the basis for determining the sequence in which he was dispatched to work? A. Yes.

Q. Which union was that?

A. The sailors union.

Q. But with the sailors union you didn't put down the number of hours worked.

A. It was essentially the same system, though. The man who is waiting the longest for the job gets the job, provided he has attended union meetings while he is waiting for a ship. It is a rotating system on the same basis as the low-man-out system.

Q. At the sailors union, however, as I understand it, the time that you were waiting has based on some written evidence that you got from the dispatcher or whoever was running the hall.

A. When you are ready to start waiting, you come to the dispatcher and he gives you a shipping card with a date on it. And that date remains active and bona fide and can get you a job, provided you have meeting stamps on the other side.

Q. But you, as an individual, did not have any right to put in any date you wanted on the front of that card.

A. Oh, no.

Q. And you did not have the right to put in dates that you went to meetings on the backside of that card.

A. No.

Q. That was done by somebody else.

[92]

A. Yes.

Q. On the longshore side, the data that was involved where you were was based on what information you provided yourself or your partner.

A. Yes. And I assume it was also based on information on the other end. I mean, theoretically at least, there are periodic checks on all longshoremen and the hours they work so that any

mistakes that they made can be corrected. I don't think the employers or the union are going to allow the men themselves to be the only record-keeper, and we in fact were not the only record-keeper.

Q. Do you know of any occasion other than the occasion with respect to the deregistration of the group of B men in the spring of 1963 in which there was an indication that there had been such checking up by either the union or the PMA as to the hours reported by the men for use in their dispatching?

A. I seem to recall that there were B men who had been before the labor relations committee in the early period of our being down there. I don't recall precisely what the charges were —whether they were availability or low-man-out or bypassing the hiring hall or what.

Q. Well, now, weren't there some developments as to this that led to some meeting on the subject of chiseling among the B men?

A. At the B men meetings there was never a lot of discussion about chiseling, because I don't think there was a big problem

[93]

with chiseling among B men. The B men had no protection, other that their ability to keep an absolutely clean record. No one was representing us.

Q. Was it generally known among the B men that you had to keep an absolutely clean record?

A. I think so.

Q. Nobody was telling you that you should do so?

A. Nobody was telling us to the contrary, and everybody was telling us that we should do what was right.

Q. In other words, this was commonly told you by union officials, A men and everybody else. Is that it?

A. Yes. That's what the message was. What the practice might have been among A men might have been something else,

because it was known that they were chiseling and getting time off and violating the low-man-out rules and some of this appeared in the weekly longshore bulletin.

Q. But you did know that there were penalties against A men for violation of the low-man-out procedures.

A. Yes.

Q. And you saw those simply by looking at the union bulletins.

A. That is correct.

No. 80 499

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

GEORGE R. WILLIAMS, et al.,
Petitioners,

vs.

PACIFIC MARITIME ASSOCIATION, a non-profit corporation, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an unincorporated association, and I.L.W.U. LOCAL No. 10,
Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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No. 80-499

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

GEORGE R. WILLIAMS et al.,
Petitioners,

VS.

PACIFIC MARITIME ASSOCIATION, a non-profit corporation, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an unincorporated association, and I.L.W.U. LOCAL NO. 10,
Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

I
INTRODUCTION

The 51 petitioners were part of a group of some 530 Pacific Coast longshoremen who applied in 1963 for promotion from a Class "B" status with limited employment rights to "A" status carrying full employment status. Over 80 percent met the promotion standards.[1] Petitioners did not. Two courts below have held that

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[1]The relevant standards included (a) availability for employment, (b) prompt payment of each man's pro-rata share of the expenses of the dispatch hall, (c) not cheating on fellow workers in the procurement of employment and (d) freedom from employer complaints of intoxication.

petitioners have not been denied any rights under their collective bargaining contract and have not been denied fair representation by their union. Petitioners ask this Court to review and overturn those decisions of the courts below.

This case has had a long and tortuous passage through the lower federal courts. Petitioners filed their first complaint over sixteen years ago on April 18, 1964. Pet.App. 61.[2] Successive pleading failures finally led to the fourth amended complaint which the district court also dismissed. Petitioners then filed their first appeal to the Ninth Circuit Court of Appeals. Between completion of briefing and oral argument, this Court handed down *Vaca v. Sipes,* 386 U.S. 171 (1967), the landmark decision on the duty of fair representation. The court of appeals thereupon returned petitioners' case to the district court for further proceedings. *Williams v. Pacific Maritime Association,* 384 F.2d 935 (9th Cir.) *cert. denied* 390 U.S. 987 (1967). The district court excised portions of the fourth amended complaint and dismissed the claims against the individual defendants. Petitioners again resorted to the court of appeals which affirmed the lower court. *Williams v. Pacific Maritime Association,* 421 F.2d. 1287 (9th Cir. 1970).

With the form of the complaint finally settled, the matter came to trial on January 10, 1974. The taking of live testimony continued for six months. The final trial record consisted of 7448 pages of testimony, approximately 1000 exhibits and a 293 page stipulation as to testimony.[3] The trial court ruled against petitioners.

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[2]Designation of References. We shall refer to the Petition for Writ of Certiorari as Pet., to petitioners appendix as Pet.App. and to our appendix as Resp.App. each to be followed with appropriate page numbers.

[3]The stipulation contained the following:

> The [District] Court now has before it a record that will permit it to make lawful and proper credibility findings, to be given their usual weight on appeal, as to items of testimony submitted by this stipulation and as to any witness who is deemed to give

For the third time petitioners took their case to the court of appeals. After extensive argument, that court affirmed the judgment below. *Williams v. Pacific Maritime Association*, 617 F.2d 1321 (9th Cir. 1980). In their petition to this Court, petitioners take what should be the last step to bring this protracted proceeding to a close.[4]

Petitioners urge this Court to accept their version of the facts. They have quoted and referred to bits of the record to construct a version of the facts which has been rejected by the two courts below. They have totally ignored the balance of the vast record which paints an entirely different picture. We accept the factual statement of the court of appeals and shall not reargue the facts here.

Petitioners submitted an Appendix which contains scraps of evidence to support their factual contentions. We have submitted an Appendix which contains substantially more of the record below but which is still only a fraction of the mammoth record from which the district court drew its findings. Our Appendix contains sufficient excerpts from the record to support the district court's findings on all issues raised by petitioners.

Our effort shall be devoted to showing that petitioners offer no legal issues justifying a grant of a writ of certiorari. We shall show that petitioners attack a decision bearing little resemblance to the decision of the court below.

Petitioners offer six Questions Presented for Review. We discuss each in detail below. None justifies review by this Court. None raises a question of conflict among the circuit courts. None poses an important federal legal issue of first impression

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testimony hereunder, and a record upon which the Court can resolve the relevant and material conflicts, if it finds any, within the testimony here presented or between items of the testimony here presented and the balance of the record herein. Resp.App. 112-13

[4]Proposed *amici* seek to raise an issue which petitioners themselves do not raise here and did not raise in the court of appeals. *Cf. Rosenberg v. United States*, 346 U.S. 273, 291-92 (1953). ("We discountenance this practice." *Id.* at 292.)

which this Court should resolve. None suggests that the Ninth Circuit failed to follow any decision of this Court. Although the Questions Presented for Review show petitioners' displeasure with the outcome of their case, petitioners cannot seriously argue that the court below departed from the accepted and usual course of judicial proceedings.

Petitioners principal legal arguments are that the Ninth Circuit Court of Appeals departed from the "teachings' of this Court by refusing to view arbitrary conduct as an independent ground for finding a breach of the duty of fair representation and created conflicts among the courts of appeals as to whether each recognizes arbitrary conduct as a distinct basis for finding a breach of the duty of fair representation. In Section III below we show that these arguments are without merit.

II.
PETITIONERS' QUESTIONS FOR REVIEW DO NOT WARRANT GRANT OF CERTIORARI

Petitioners pose six questions for review by this Court. As stated above, not one justifies review by the Court. An analysis of the decision below refutes petitioners' position. Below we analyze each of petitioners' Questions Presented for Review.

A. The factual situation of this case does not warrant reexamination by this Court.

Petitioners' first two questions for review ask this Court to reexamine whether the union's duty of fair representation was breached in a particular and individualistic factual configuration.[5] Such reexamination is not within the limited and specific

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[5]Petitioners' first and second Questions Presented for Review are:

1. Whether or not a union breaches its statutory duty to provide fair representation when it agrees to the discharge of a large number of members of the collective bargaining unit for work-related infractions which were not the subject of a discharge penalty when the infractions occurred during the previous four years of employment?
2. Whether or not a union breaches its duty to provide fair representation when it agrees to the discharge of a large

function of certiorari to the nation's highest tribunal. The rules of this Court specifically state that review on certiorari "is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor." SUP.CT. R. 19(1). Petitioners do not demonstrate any special or important reasons in this case.

As evidenced by the long history of opinions below, petitioners have already had their days in court. The issues involved in this case have now been litigated three times in the appeals court. The particular judgment at issue was rendered after a lengthy trial in the district court. It would not be appropriate for this Court once again to sift through the specific factual circumstances of this case.

The issues raised by petitioners in the first two questions were adequately and thoroughly examined by the courts below. One by one the court of appeals discussed the facts underlying the allegations of petitioners as to the duty of fair representation claims, and each time the court concluded no breach had occurred. 617 F.2d at 1330-34; Pet.App. 16-24. The court of appeals opinion correctly applied the duty of fair representation doctrine as articulated by this Court, by its own prior decisions and by the other appeals courts for other circuits. Its decision on the facts reconfirmed the findings and conclusions of the district court. After their unsuccessful appeal to the Ninth Circuit, petitioners requested reconsideration. However, neither the panel that heard the case nor any single judge of the Ninth Circuit even requested a vote on the suggestion for rehearing *en banc*.

Thus petitioners have already made several unsuccessful attempts to convince the lower courts that their version of the facts constituted a breach of the union's duty of fair representa-

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number of members of the collective bargaining unit for conduct which was not in violation of any provision of the collective bargaining agreement or applicable working rules at any time during the previous four years of employment?

tion. They now request this Court to review the record once again. Mr. Justice Holmes, speaking for the Court, ruled that such repeated inquiry into particular facts is an inappropriate task for the Supreme Court. "We do not grant certiorari to review evidence and discuss specific facts." *United States v. Johnson,* 268 U.S. 220, 227 (1925).

As this Court recently noted in *International Union of Electrical Workers v. Foust,* 442 U.S. 42, 46 n. 7 (1979), the review of an evidentiary question in a breach of the duty of fair representation case is a factual matter for which this Court is "unwilling to substitute [its] judgment for that of the jury, District Court, and Court of Appeals. . . ."[6] See also *Stuart v. Hayden* 169 U.S. 1, 14 (1898); *Baker v. Schofield,* 243 U.S. 114, 118 (1917); *Graver Tank and Manufacturing Co. v. Linde Air Products Co.,* 336 U.S. 271, 275 (1949); *Berenyi v. Director, INS,* 385 U.S. 630, 635-36 (1967).

The petitioners' first two Questions Presented for Review turn on the particular facts of this case alone and are of interest only to the instant parties. This Court has affirmed that when issues presented are insignificant to the general welfare a grant of a writ of certiorari is inappropriate. *Layne & Bowler Corp. v. Western Well Works, Inc.,* 261 U.S. 387, 393 (1923); *Rice v. Sioux City Memorial Park Cemetery, Inc.,* 349 U.S. 70, 79 (1955).

In effect, petitioners request this Court to delve into yet another review of the lengthy record of this case in the hope that it may weigh the evidence differently than the two prior courts and find what those courts have been completely unable to find: Proof of the union's breach of its duty of fair represen-

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[6]More recently in *Williams v. International Ass'n. of Machinists,* ___ U.S. ___ (No. 79-2007) 49 U.S.L.W., 3210, 3234 (October 6, 1980) this Court refused to reexamine a court of appeals' *per curiam* affirmance without opinion of a district court's findings and conclusions in a case involving a claim of the breach of the duty of fair representation. *Williams v. International Ass'n. of Machinists,* 617 F.2d 441 (5th Cir. 1980).

tation to petitioners. That is not the function of certiorari and the writ should be denied.[7]

B. This case presents no issue of the "preclusive effect" of National Labor Relations Board decisions upon federal courts.

In their third Question Presented for Review, petitioners ask this Court to decide a matter that is not an issue in this case. Petitioners assert that the courts below gave "preclusive effect" to a decision of the National Labor Relations Board. The assertion is without merit.[8]

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[7]While petitioners argue that this Court "may" review findings of fact under the "two court rule" if there is a "very obvious and exceptional" showing of error, Pet. 35, they have failed to make such a showing here. To the contrary, as this response demonstrates, no such showing is possible. In that situation, the admonition in *Graver Tank, supra,* is particularly apposite: "A court of law such as this Court is, rather than a court for the correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below . . ." 366 U.S. at 275. *Berenyi, supra,* stated the policy underlying the two court rule:

> The policy underlying the 'two court' rule is obvious. This Court possesses no empirical expertise to set aside the careful and reasonable conclusions of lower courts on purely factual issues. When, as here, resolution of the disputed factual issues turns largely on an assessment of the relative credibility of witnesses whose testimony or demeanor was observed only by the trial court, the rule has particular force. 385 U.S. at 636.

The *Berenyi* court noted an exception in the case of constitutional issues, 385 U.S. at 636, none of which are present here. In *United States v. Ceccolini,* 435 U.S. 268 (1978) this Court reiterated its "traditional deference to the 'two court'" rule and left undisturbed the court of appeals affirmance of a district court finding of fact except where a constitutional question was involved. *Id.* at 273-279. *Rose v. Mitchell,* 443 U.S. 545 (1979) was not a "two court rule" case. In any event, it involved the constitutional claim of racial discrimination in jury selection.

[8]Petitioners' third Question Presented for Review is: "Whether or not a decision of the National Labor Relations Board involving other persons similarly situated, but never subjected to judicial review, is entitled to preclusive effect upon a later case in the courts for unfair representation and breach of the collective bargaining agreement?"

In its findings numbered 125 and 126, the district court found as a fact that the National Labor Relations Board decided, *inter alia,* that the use of the late payment of pro-rata as an explicit promotion standard for Class "B" longshoremen did not violate the National Labor Relations Act. Pet.App. 67-68. The district court, however, made no conclusions of law based on the Board's decision. Nothing in the district court's conclusions of law can be read to support the idea that the district court considered itself bound by the Board's decision and petitioners do not suggest as much. The district court's decision on whether the union breached its duty of fair representation rested upon its view of the evidence presented to it and not upon the decision of the National Labor Relations Board.

In this posture, the Ninth Circuit reviewed the district court's decision. That court's entire treatment of the Board case occupies only a few lines of the opinion. 617 F.2d at 1333; Pet.App. 23. Beyond cavil, the Ninth Circuit did not give "preclusive effect" to the NLRB decision. The court did no more than independently agree with the Board's conclusion.

Despite the foregoing, petitioners erect a strawman argument based upon the premise the "federal courts are not and should not be precluded from examining an issue resolved by the Board years earlier when different legal principles and standards applied." Pet. 31.[9] The premise has no application to

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[9]The implication of petitioners' position is disturbing in that it would follow that a person could engage in activity lawful under the then prevailing standards but later could be assessed civil damages based upon subsequently changed law.

the facts of this case. A reading of the circuit court's opinion and the findings and conclusions of the district court reveal that neither court considered that the Board decision precluded it from examining the merits of the case. Petitioners' real complaint is that all three tribunals independently reached the same conclusion adverse to petitioners' position.

If any justification exists for this Court to review the res judicata or collateral estoppel effect of Board decisions upon subsequent court cases (and we see none), this case is not an appropriate vehicle for such review.[10]

C. This case presents no issue of the waiver of an employee's right to fair representation or the right to be discharged only for good cause.

In their fourth Question Presented for Review, petitioners ask for review based on their assertion that the court below concluded that the language in the application for Class "B" registration which each petitioner signed constituted a waiver of fair representation and that the collective bargaining parties considered petitioners' acceptance of employment as a waiver of

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[10]If the issue were properly here it would have to be noted that petitioners themselves filed NLRB charges raising the same issues (Exhibit AH) which were ultimately dismissed. Under this circumstance, the courts below, had they in fact regarded the Board's decision as "preclusive," would have been justified in finding collateral estoppel. *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394 (1966); *Paramount Transp. Sys. v. Chauffeurs, Local 150*, 529 F.2d 1284 (9th Cir.), *cert. denied* 426 U.S. 908 (1976); *Paramount Trans. Sys. v. Chauffeurs, Local 150*, 436 F.2d 1064 (9th Cir. 1971). Petitioners' reliance on *Stewart v. Travelers Corp.*, 503 F.2d 108 (9th Cir. 1974) is wide of the mark. *Stewart* presented the question of whether the Consumer Credit Protection Act of 1968, 15 U.S.C. §§1601, *et seq.*, which prohibits discharge of an employee for a garnishment for one indebtedness, created a private cause of action. Nothing in *Stewart* spoke to a collectively-bargained requirement that workers share the cost of operating the facility through which they are dispatched to employment.

their right to be discharged only for good cause.[11] These conclusions are ones the court below never made. While the court of appeals did quote the language of the application[12] and the rules[13] it referred to this and other evidence to support the district court's findings and conclusions that respondents adequately warned petitioners that misconduct could lead to deregistration.[14] In its discussion of this evidence the court below

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[11]Petitioners' fourth Question Presented for Review is "Whether or not members of the collective bargaining unit may be compelled to agree to the waiver of their rights to fair representation and to be discharged only for good cause as a condition of employment?"

[12]Class "B" registration, if granted, shall be subject to agreements between the PMA and ILWU, or their successors, and to *rules with respect to registration and deregistration* established by said parties; I understand that registered longshoremen may be deregistered and that *registration may be revoked in accordance with such agreements and such rules now in effect or hereafter to be agreed upon or adopted* by the Association and the Union of their successors or by the Joint Port Labor Relations Committee. (Emphasis added by court). 617 F.2d at 1332; Pet.App. 19.

[13]Deregistration of Limited Registration (Class "B") Longshoremen. (a) *A Class "B" longshoreman may be deregistered for cause by the Joint Labor Relations Committee (in accordance with such rules or uniform procedures as may be established or followed by such Committee)* if the Committee finds:

> (i-x) any of ten types of misconduct or inadequacy for the job of longshoreman;
>
> (xi) or for any other cause, provided that neither membership or nonmembership in the union nor activity or nonactivity for or against the union shall be a factor in considering applications for registration or in deregistration.

(Emphasis added by court). 617 F.2d at 1331-32; Pet.App. 19-20.

[14]The District Court's finding that plaintiffs were adequately warned is amply supported by the record. *E.g.*, Resp.App. 115-18 ("I remember hearing such warnings from a number of the union officials during the B Men's meetings . . . I acknowledge that I and all other B Men had to keep an absolutely clean record . . . [w]e were told on various occasions that the union expected strict observance of all rules by us . . ."); *id.* at 130, 135-36 ("I was from time to time admonished 'keep your nose clean' by the union".)

stated: "We are convinced, however, that the union supplied the employees with repeated and adequate warning that misconduct of which they were guilty could be the basis for their failure to advance to Class 'A' status." 617 F.2d at 1331; Pet.App. 19.

Neither court below rested its decision upon the suggestion that plaintiffs had waived any right to fair representation or any right to be discharged only for good cause.[15]

Petitioners' reliance upon *J.I. Case v. NLRB*, 321 U.S. 332 (1944) is misplaced. There this Court rejected an employer's attempt to use individual employment contracts as a bar to entering into collective bargaining agreements with a union. Here the court below did not hold that the 1958 Rules and the 1959 applications were individual contracts. To the contrary, the court of appeals specifically held that they were part of the collective bargaining agreement. The court stated:

> The 1958 Rules as well as the 1963 standards for deregistration were validly adopted by the Port Committee in accordance with the second clause in ... [subsection 17.851 of the collective bargaining agreement]. Under that clause the Port Committee was entitled to promulgate future registration rules and procedures subject to the action of the Coast Committee setting them aside in exercise of its ultimate power over this subject. 617 F.2d at 1334; Pet.App. 25.

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[15]Petitioners position is curious. They argue that they were never warned that misconduct could result in deregistration and that the failure to warn them was a breach of the duty of fair representation. When confronted with the evidence cited by the court to show ample warning, petitioners argue that the warnings they acknowledge receiving should be ignored because such warnings themselves were "waivers" of their right to fair representation and to be discharged only for good cause. The record demonstrates that petitioners ignored the warnings because they thought they could get away with it. Resp.App. 120, 135, 137. It takes little imagination, to use petitioners' language, Pet. 29, to envisage the argument petitioners would now be making if they had not been given these advance warnings.

The other cases cited by petitioners are inapposite. Respondents do not quarrel with the statement in *Bisso v. Inland Waterway Corp.*, 349 U.S. 85, 90 (1955) that contracts contrary to public policy are invalid. Respondents point out, however, that the instant case does not involve enforcing a contract with petitioners, but rather of determining from the record whether petitioners along with 480 other longshoremen were put on notice from the beginning that their misconduct could lead to their deregistration.

Finally, petitioners refer to *Archie v. Chicago Truck Drivers' Union*, 585 F.2d 210 (7th Cir. 1978), which is referred to as the "only ... other" case involving "a union requirement that an employee maintain an absolutely clean record." Pet. 30.[16] The case is not at all in point. In *Archie* an EEOC case was dismissed at the pleading stage.

> Archie has claimed in his first amended complaint that the Union in effecting his reinstatement required him to sign a statement of conditions of continued re-employment *which it knew he would be unable to meet and which was never required of white employees.* He has also claimed that the Union arbitrarily failed to represent him following his second discharge. These claims constitute factual allegations sufficient *to prevent dismissal of his complaint at this early stage of the proceedings.* (Emphasis added). 585 F.2d at 220.

This is a far cry from the instant case which presents no issues of racial discrimination (Resp.App. 126) and in which, after a protracted trial, it appears that the condition imposed on petitioners—to avoid misconduct which could lead to their discharge—was one that the union had the right to expect could be met by responsible employees and which in fact was easily complied with by 80 percent of petitioners' fellow workers.

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[16]Petitioners overstate the facts; the two documents referred to are not "union requirement(s)." They are joint rules and a joint application for employment.

The fact that over 80 percent of the Class B men met the standards demonstrates that the overwhelming majority of them were aware of their obligations under the contract and that the union was remarkably successful at obtaining permanent status for the Class B men. 617 F.2d at 1334; Pet.App. 24.

D. This Court should not review the merits of a breach of collective bargaining agreement where there is a final and binding decision in the contractual grievance procedure.

In their fifth Question Presented for Review, petitioners ask this Court to get involved in deciding a breach of collective bargaining agreement issue.[17] They contend that they were de-registered without good cause and in violation of the common law of the shop.[18] The court below pointed out that Joint Coast

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[17]As their fifth Question Presented for Review, petitioners state: "Whether or not the union and employer breach the collective bargaining agreement when they jointly agree to discharge a large number of members of the bargaining unit without 'good cause' and in violation of the past practices of the 'common law of the shop?'

[18]Petitioners, citing *Day v. United Auto., Aerospace & Agricultural Implement Workers*, 466 F.2d 83, 90-92 (6th Cir. 1972) argue that "[w]here an employee is not at fault he cannot be disciplined, and discharged for cause means for 'good cause'". Pet. 38. These truisms have no application to this case. In the instant case each petitioner was found after trial to have been "at fault" for violating one or more of the rules and was found to have been discharged for one or more causes which both of the courts below found were "good": violation of the LMO rules or the intoxication rule, or failure to make timely payments of pro rata, or failure to make himself available for work. *Day* reversed a summary judgment "before hearing of the evidence," 477 F.2d at 86, and held that on the facts *alleged* in that case, there were issues which required a full trial *id. Cf. Lewis v. Magna Am. Corp.*, 472 F.2d 560, 561 (6th Cir. 1972) where the court that decided *Day* distinguished it *on the facts*. Here, of course, the trial has been had. After weighing the evidence, both courts below have found that petitioners were at fault for not heeding the

Committee unanimously agreed that petitioners' breach of contract claims were not meritorious and that that decision was final and binding. 617 F.2d at 1327-28; Pet.App. 11-12. In the absence of a determination that a breach of the duty of fair representation occurred, petitioners are not entitled to further review. *Vaca v. Sipes,* 386 U.S. 171 (1967); *General Drivers Local 89 v. Riss & Co.,* 372 U.S. 517 (1963).

Petitioners seek to avoid the finality of the Coast Committee decision by implying that that Committee retroactively amended the contract. Petitioners argue that the court below erred because it held that "the contract could be amended and adversely affect" their rights. Pet. 28. The court of appeals held no such thing. What the court held was:

> Thus, there were no rules retroactively turning permitted actions of [petitioners] into misconduct. The actions found to be cause for deregistration were all misconduct under

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warnings constantly given them and that each petitioner was discharged for one or more of the good causes mentioned above. *Day* is simply not analogous to this case.

Equally inapposite is *Boone v. Armstrong Cork Co.,* 384 F.2d 285 (5th Cir. 1967) which petitioners cite for the proposition that "a restriction on an employer's right to discharge at will may be implied." Pet. 39. Whether that be true or not, neither court below held in this case that the employer had a right to discharge at will. On this record, the courts below held that petitioners were not discharged at the will of the employer but for having failed to conform with well known pre-existing rules of conduct with which 80 percent of the workers were able to comply without any difficulty. These findings are not clearly erroneous.

In this case there was no "misunderstanding", as there was in *Boone,* which could be used to forgive petitioners' violations of the rules. *Id.* at 290. *Boone* furthermore points out, *id.* at 291, as did the court of appeals in this case (*infra*), that a final decision reached in the grievance-artibration machinery is binding upon the employee as well as upon the union and the employer.

> Port Committee rules in effect throughout the period of [petitioners'] registration. This fact and the observation that [petitioners] were warned repeatedly that their records would be reviewed upon consideration for advancement to Class "A" status are sufficient to support the district court's conclusion that the union did not breach a duty to warn of conduct that might lead to deregistration. 617 F.2d at 1332; Pet.App. 22.

Petitioners reliance upon *Humphrey v. Moore,* 375 U.S. 335 (1964), fails for two reasons. First, it is based upon their unwarranted assumption that respondents amended the collective bargaining agreement. Second, it misreads the opinion. Petitioners argue that such amendment was unlawful because a majority of this court "rejected" the view of Justices Brennan and Goldberg in *Humphrey v. Moore,* that the parties to a collective bargaining contract are "free by joint action to modify, amend and supplement their original collective bargaining agreement." All the majority said on the point was that it would "assume" that a joint committee's power was "circumscribed" by the agreement (*Id.* at 345) but added "we need not consider the problem posed ... if the parties had acted to amend the provision." *Id.* at n. 7.[19]

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[19]The language petitioners quote from *Price v. International Bhd. of Teamsters,* 457 F.2d 605, 610 (3d Cir. 1972), Pet. 28, has to do with the so-called Bill of Rights, 29 U.S.C. §414, and not with Section 301, 29 U.S.C. §185. In any case, in *Price,* the court of appeals, as did the court below, found that *on the record before it* there was no breach of the duty of fair representation. It is clear from all these cases that the district courts are determining breach of duty cases under correct legal standards. However, they obviously come up with varying results because the facts of the cases are different. The various courts of appeals, like the court of appeals in this case, examine the record before them and determine whether or not the findings of the trial court were clearly erroneous. None of this presents any question for review by this Court.

E. This Court need not grant certiorari to determine that the court below diligently performed its judicial function.

In their sixth Question Presented for Review, petitioners complain that the Ninth Circuit Court of Appeals abdicated its judicial responsibility.[20] Reading the opinion of the court below should dispel any even colorable merit to this claim. The opinion abounds with references to the evidence and to appropriate legal authorities. Ignoring these, petitioners stretch to find proof of abdication.

Petitioners complain that the court below could not have considered the record because it referred to Class "B" men as provisional or probationary. Pet. 33. The court was fully aware of petitioners' tenure in the industry. In its opinion, the court points out that petitioners applied for registration in 1959 and were deregistered four years later in 1963. 617 F.2d at 1324; Pet.App. 5. The opinion also demonstrates that the court below knew that petitioners were "full-time." The court's opinion frequently refers to the 70 percent availability rule which was applicable to petitioners. 617 F.2d at 1324, 1332-33; Pet.App. 4, 21, 23. The rule defined what "full-time" means in the longshore industry. Quite clearly the court below understood that petitioners had been full-time employees for four years. More importantly, the court below recognized that they held a

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[20]The sixth Question Presented for Review states: "Whether or not the Court of Appeals abdicated its responsibility to make an independent review of the record when it simply approved the findings of the District Court which were merely xeroxed copies of the findings submitted by the prevailing parties?"

status below that of full Class "A" registration.[21] The use of the words "provisional" or "probationary" is appropriately descriptive of petitioners' status and raises no question for review by the Court.[22]

Petitioners assert that the court abdicated its judicial responsibility because it believed that petitioners were deregistered for misconduct rather than for failing to satisfy the explicit promotion standards. Pet. 34. This is a semantic squabble. It is true that all Class "B" men who failed to win promotion were deregistered. It is equally true, as the court of appeals found, that but for petitioners' misconduct, they would not have been deregistered but instead would have been promoted. In any event, the court's statement does not justify the conclusion that it abdicated its responsibility or that this Court should undertake to rewrite the opinion below.

Petitioners suggest that the court below abdicated its responsibility because it misunderstood the pro-rata standard. Pet.

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[21]"The agreement provided for two classes of longshoremen, the preferred employees, called Class A, and the limited registered longshoremen, Class B. In operating the hiring hall, the Port Committee distributed work among longshoremen according to their registered status. Fully registered Class A longshoremen received priority for available work. Class B longshoremen had limited rights to available work, were subject to stricter rules and more stringent penalties than were applicable to Class A workers . . ." 617 F.2d at 1323-24; App. 2-3.

[22]The district court defined the status of Class "B" longshoremen in its finding number 32. It stated: "From the day that each Class "B" man gained limited registration, he was repeatedly and clearly informed that he was a second-class category, that he had to keep his "nose clean," that he should live up to all the rules, that he could be deregistered for failing to live up to the rules, and that the union and the employer were keeping records with respect to his misconduct to which they would give consideration when the time came for him to be reviewed for promotion." Pet.App. 38. The record amply supports this finding. See *n. 14 supra.*

35. Petitioners read the opinion to mean that the court below believed that petitioners were deregistered for nonpayment of pro-rata. The opinion shows no confusion that it was late payment that led to denial of promotion and then to deregistration. The court below quoted the relevant standard:

> Any Class "B" longshoreman found to have been late in the payment of his pro-rata eight or more times (or six or more times with an otherwise blemished record) shall be considered ineligible for advancement to Class "A" registration. 617 F2d at 1324; Pet.App. 4.

Nothing in the court's opinion suggests that it believed the standard to be nonpayment rather than late payment.

Petitioners complain that the court below did not point to the evidence showing that petitioners were told they could lose their jobs for the various violations of which they were admittedly guilty. The district court found that petitioners were so informed. The court of appeals in reviewing the record found, as the record required it to find, that this finding was not erroneous. In the Appendix to this brief is set forth some of the evidence from this voluminous record which establishes that each petitioner was fully informed of the consequences of failure to maintain a clean record. Petitioners' quarrel is with the record—much of it stipulated to by them—not with the correct application of the legal principles to the record.

Petitioners argue that the court of appeals failed to make an independent review of the record and that it was "dead wrong" about the record, etc. Pet. 33-34. In this way, petitioners ask this Court, under the guise of a certiorari petition, to review 7448 pages of testimony, 1000 exhibits and 293 pages of jointly stipulated facts. They make this request in the face of the fact that the court of appeals, without dissent, concluded that the district court's findings of fact were not clearly erroneous.

In addition to the questions presented and discussed above, petitioners argue that the Court of Appeals failed to follow the teachings of this Court and needlessly contributed to existing conflicts among the circuits in fair representation cases. Pet. 25-28. Neither of these contentions is well taken.

III
THE COURT OF APPEALS DID NOT DISREGARD THE "TEACHINGS" OF THIS COURT NOR DOES ITS DECISION CONFLICT WITH THE DECISIONS OF ANY OTHER COURT OF APPEALS

As noted above, the Ninth Circuit remanded Petitioners' first appeal in this matter to the district court for reconsideration in light of this Court's landmark decision in *Vaca v. Sipes,* 386 U.S. 171 (1967). *Williams v. Pacific Maritime Association,* 384 F.2d 935 (9th Cir.) *cert. denied,* 390 U.S. 987 (1967). From that decision forward, the Ninth Circuit has recognized and followed the teachings of this Court.

Vaca grew out of *Steele v. Louisville & Nashville Railway,* 323 U.S. 192, 202 (1944), where this Court held that an exclusive bargaining agent had a duty to avoid racially discriminatory conduct. *Id.* The Court in *Vaca* extended the duty to encompass not only racial discrimination, but all union conduct which is "arbitrary, discriminatory, or in bad faith." 386 U.S. at 190. By this and other statements in its opinion, the Court established "arbitrary conduct" as one of the grounds for a finding of breach of the duty of fair representation.

Later this Court seemed to eliminate arbitrary conduct as an independent basis for a breach of the duty of fair representation. *Amalgamated Association of Street, Electric Railway & Motor Coach Employees v. Lockridge,* 403 U.S. 274, 299 (1971). *Lockridge* dealt principally with NLRB preemption of jurisdiction. The Court said, in *dicta,* that for a breach of the duty of fair representation to occur, "there must be substantial evidence of fraud, deceitful action or dishonest conduct." *Id.*

While the Ninth Circuit in *Retana v. Apartment, Motel, Hotel & Elevator Operators Union Local No. 14,* 453 F.2d 1018 (9th Cir. 1972) noted the uncertainty which *Lockridge* appeared to place on the standards for union action, it concluded that "the *Vaca* opinion's repeated reference to arbitrary union conduct reflects a calculated broadening of the fair representation standard." *Id.* at 1023 n.8. Two years later, the Ninth Circuit once again

applied this Court's "arbitrary" standard. *Beriault v. Local 40, Super Cargoes & Checkers of the International Longshoremen's & Warehousemen's Union*, 501 F.2d 258, 264 (9th Cir. 1974). The interpretation given by the Ninth Circuit in these cases presaged later decisions of this Court.

Recent Supreme Court articulations of the standards for union conduct in *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976) and *International Brotherhood of Electrical Workers v. Foust*, 442 U.S. 42 (1979) clearly reaffirm the guidelines enunciated in *Vaca* that arbitrary conduct is an independent ground for a breach of the duty of fair representation.[23] In *Foust* this Court was specific: "In particular, a union breaches its duty when its conduct is arbitrary, discriminatory, *or* in bad faith." (emphasis added). 442 U.S. at 47, citing *Vaca*, 386 U.S. at 190.

After *Hines* and *Foust*, the Ninth Circuit continued to hold that arbitrary conduct was sufficient to constitute a breach of the duty of fair representation. In *Robesky v. Qantas Empire Airways, Ltd.*, 573 F.2d 1082, 1091 (9th Cir. 1978), the Ninth Circuit held a union could breach its duty of fair representation if it acted "arbitrarily" even in the absence of bad faith or discrimination.

In the instant case, the court below demonstrated its knowledge of, and correctly applied, this Court's holdings in fair representation cases. In Part III of its opinion, 617 F.2d at 1328-34; Pet.App. 12-24, the court of appeals thoroughly examined the law relating to the duty of fair representation. It cited and relied upon the very cases petitioners use as a basis of their argument.

There is no merit in petitioners' argument that the decision below conflicts with the Ninth Circuit's own decision in *Retana v. Apartment, Motel, Hotel and Elevator Operators Union, Local No. 14*, 453 F.2d 1018 (9th Cir. 1972) or with the Third Circuit's decision in *Brady v. Trans World Airlines, Inc.*, 401 F.2d 87 (3rd Cir. 1968). Pet. 27-28. The court below, citing these cases, recog-

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[23]Neither case cited *Lockridge*

nized that *Retana* and *Brady* held that "the duty of fair representation requires unions to explain to members of the bargaining unit their rights and duties under the collective bargaining agreement." 617 F.2d at 1331; Pet.App. 19. The court of appeals applied that principle to this case and held that it was "convinced that the union supplied the employees with repeated and adequate warnings that the misconduct of which they were found guilty could be the basis for their failure to advance to Class A status." *Id.* Indeed the warnings went much farther and specified that misconduct was cause for "deregistration." 617 F.2d at 1331-32; Pet.App. 19-20. "...[W]arnings to longshoremen not to engage in such misconduct abound in the record". 617 F.2d at 1332; Pet.App. 21.

Petitioners' contention that the court of appeals disregarded the teachings of this Court and contributed to existing conflicts with other circuits finds no support in the opinion below or in the opinions of other courts of appeals. Petitioners' real quarrel is not with the legal principles enunciated by the court of appeals, which are unexceptionable, but with the affirmance by that court of the district court's findings of fact. However, as we have pointed out, those findings of fact are amply supported by the evidence and are not clearly erroneous.

Indeed, the Petitioners concede the point, albeit grudgingly: "While purporting to apply the 'bad faith or arbitrariness standard' (617 F.2d at 1330, A17), the panel actually departed from it." Pet. 27. What the court of appeals decision reveals is that it did not depart from this standard but that it carefully examined each of the four criteria utilized in the deregistration process and concluded that they were "neither arbitrary, nor irrational. Rather, each is justifiable as relevant to the qualifications for employment. . ." 617 F.2d. at 1333; Pet.App. 23.

Petitioners do not really disagree with the court's statement of legal principles. They disagree with the court's affirmance of the district court's findings which establish that the union did not breach its duty of fair representation.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be denied.

Respectfully submitted,

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November 24, 1980

FILE
DEC 8
MICHAEL RODAK,

No. 80-499

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1980

GEORGE R. WILLIAMS, et al.,
Petitioners,

VS.

PACIFIC MARITIME ASSOCIATION, a non-profit corporation, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an unincorporated association, and I.L.W.U. LOCAL No. 10,
Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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In their Response to the Petition for Certiorari, respondents do not dispute the factual record presented by petitioners. Indeed, the facts in the record are essentially uncontradicted. The District Court was not required to resolve any substantial conflicting testimony. It is the decision reached on uncontradicted facts which is at issue. It is uncontradicted that when petitioners were registered as longshoremen in 1959, they were provided with written and oral working rules with specific, graduated penalties. It is uncontradicted that petitioners worked under these rules and penalties for four years and that any infractions they committed during that period did not constitute grounds for being fired under any existing working rule or

contractual provision. Petitioners would certainly have been promptly deregistered if their conduct constituted "cause" justifying that penalty.

Respondents also agree that new penalties were adopted in 1963 and that petitioners were fired in 1963 for conduct which would not have led to firing under the rules and penalties in existence when the infractions occurred. It is uncontradicted that the sole rationale of respondents for the deregistrations in 1963 is that longshoremen could be fired for "any other cause" whatsoever. If respondents are correct that the firing of petitioners in these circumstances for "any other cause" whatsoever after four years of employment comports with the duty of fair representation and does not constitute a breach of the collective bargaining agreement, then we concede that the petition should be denied.

Respondents' position would be analogous to that of a law student, whom we shall call John Jones, who maintains an acceptable grade point average for three years of law school, only to be told a month before graduation that the required average for good standing is being changed, and that all who meet the new average will receive their diplomas, while those whose records over the past three years are not up to the new average are to be dismissed from school and become ineligible for registration. When the law student, John Jones, cries "but I met the standards for the three years I was in law school, and now you won't let me graduate after spending all this time and money—this a personal tragedy and is totally unfair", the law school administration responds that "80% of the students were able to meet the standards, even though adopted after the third year, and therefore you are simply out of luck".

If the situation in the hypothetical would constitute the law of the land, it certainly would not constitute justice,

and, in fact, it is not the law of the land, although respondents would argue to the contrary. In fact, the law of the land in the context of labor cases as it has been interpreted by this Court in its unfair representation cases over the past 36 years, is based on fundamental fairness and industrial due process. Those concepts cannot be squared with the facts of this case any more than with our law student, John Jones.

The heart of the Petition for Certiorari is that the retroactive application of the discharge penalty for non-dischargeable past conduct over the previous four years, without advance notice or forewarning, violates the concepts of fairness and industrial due process which underlie this Court's fair representation decisions of the past 36 years. The Petition pointed out that here was not one iota of evidence in the record establishing or even suggesting that petitioners were told by their collective bargaining representative or their employer that they could lose their jobs for a single infraction of the work rules at issue in this case. Understandably, respondents are satisfied with reducing the duty of fair representation to a pile of shavings when that duty is owed to persons who are excluded from union membership. That attitude on the part of employers and bargaining representatives eventually gave rise to this Court's recognition of the statutory duty to provide fair representation to all members of the bargaining unit, without respect to union membership. Respondents' reluctance to accept the principles of this Court's fair representation opinions has been graphically illustrated by their Response to the pending Petition.

General references to undefined "misconduct" and "warnings" do not overcome the glaring omission in the record of any evidence suggesting that petitioners knew or should have known that they could lose their jobs because of the conduct at issue in this dispute, where specific

graduated penalties had been in effect for four years. It is significant that respondents provide hardly any discussion about the hodge-podge collection of material in their 177-page Appendix. Close examination of their Appendix discloses that a great deal of that material relates to the issue of exhaustion of contractual remedies which was decided in petitioners' favor by the Court of Appeals.

We shall treat the remaining errors in respondents' Response seriatim.

1. In recognition of their inability to find support for the decision below in the record, respondents attempt to sweep this shortcoming under the rug by telling this Court that "[T]he issues involved in this case have been litigated three times in the appeals court". Res.5. Respondents are mistaken. The first appeal was on a pleading record and primarily involved a jurisdictional issue. 384 F.2d 935 (1967). The second appeal concerned only the liability of individual union officials for punitive damages. 421 F.2d 1287 (1970). The decision presently under review was the first occasion an appellate court considered the merits of petitioners' claims.

2. Respondents' two references to those portions of the record set out in their Appendix do not support the determination of the courts below that advance notification of any kind was given to petitioners that they could lose their jobs for the infractions involved in this dispute. These out of context excerpts are to stipulated testimony where petitioners said, "I acknowledge that I and the other B Men had to keep an absolutely clean record . . ." and that "I was from time to time admonished 'keep your nose clean' by the union". Res.10, n.14. This was the best evidence available of the "warnings" about "misconduct" said to abound in the record. Respondents' reference is to page 691 of the record where petitioners explain exactly

what they meant: "We were not to fight on the job, pilfer or bad-mouth the A men, but I did not have the impression that I had to keep an absolutely clean record on other matters. It was my impression that this related to only such things as fighting on the job, pilferage, and bad-mouthing the A men, *rather than other conduct for which penalties were specific.*" R.691 (emphasis added) Respondents' report that over 80% of the B men who worked along side of petitioners were able to meet the promotion standards. Res.1. Respondents did not produce a single one of the successful 80% to contradict the testimony of petitioners. The promotion standards, reproduced at Pet.App. 98, did not authorize the deregistration of longshoremen for the failure to maintain an absolutely clean record. Respondents can hardly be serious when they infer that petitioners lost their jobs because they failed to keep their noses clean. These examples represent respondents' best efforts to muster support in the record for their contention that petitioners had knowledge of the discharge penalty for the infractions involved in this case.

3. Another glaring omission is respondents' attempt to ignore the common law of the shop in the Pacific Coast longshore industry. In our Petition, we pointed out that officials of both the union and employer testified, without contradiction, that the tradition in this industry over 30 years of collective bargaining was to give a man a second chance and not to discharge him for the first violation of any working rule. Moreover, the practice during those 30 years never authorized deregistering a longshoreman unless there was a specific contractual provision or working rule authorizing the discharge penalty at the time the infractions occurred. Respondents' silence about these past practices of the industry, with which they are presumably well aware, is proof positive of the utter lack of support for the Ninth Circuit's failure to follow the policy laid down

by this Court in *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581-82 (1960). The common law of the shop becomes a part of the collective bargaining agreement and is subject to enforcement by the courts.

Respondents have attempted to avoid judicial review of the breach of contract claim by inserting into the record something which does not exist. They misleadingly report that the Court of Appeals concluded that "the Joint Coast [Labor Relations] Committee unanimously agreed that petitioners' breach of contract claims were not meritorious and that that decision was final and binding". Res. 13-14, referring to 617 F.2d at 1327-28, Pet. App. 11-12. The Court of Appeals reached no such conclusion. It merely determined that petitioners were not barred by the exhaustion of remedies defense because they failed to pursue their contract claims to the arbitrator. The Coast Committee did not decide whether or not the petitioners' deregistrations violated the contract. It held that the deregistrations did not constitute discrimination based on race, creed, color, national origin, religious or political beliefs, membership or non-membership in the union, or activity for or against the union, within the meaning of § 13 of the collective bargaining agreement. 617 F.2d at 1326-27, Pet. App. 8-9; Findings Nos. 84-123, Pet. App. 54-66. The Court of Appeals rejected respondents' exhaustion defense to both the breach of contract and unfair representation claims. It concluded that respondents' nine-month delay in convening the grievance machinery was unreasonable. It also found that the persons representing PMA and the ILWU during the grievance proceedings had either participated in deregistering petitioners or had voiced opinions on their cases. "It is unlikely that such persons could be entirely fair and impartial." 617 F.2d at 1328-29, Pet. App. 14. The Ninth Circuit then specified its precise determina-

tion that the members of the Coast Committee "unanimously agreed that the employees' claims did not allege section 13 type discrimination." 617 F.2d at 1329-30, Pet. App. 16.

In other words, petitioners were before the Coast Committee only on their appeal of their grievances of discrimination, and not because of a direct appeal on the merits of their deregistrations. Petitioners had no right under the collective bargaining agreement to take an appeal to the Coast Committee from the decision to deregister them because they were not a "party" to the contract and there was no disagreement between the actual parties to the agreement, the union and employer, about deregistering them. The record is absolutely clear on this point.

The second preamble paragraph to the collective bargaining agreement makes clear that the only parties to the Agreement are the ILWU and PMA. "The parties hereto are the International of International Longshoremen's and Warehousemen's Union and the coastwide Pacific Maritime Association". *Local 13, Int. Longshoremen's & W. U. v. Pacific Mar. Ass'n.*, 441 F.2d 1061, 1064 (9th Cir. 1971), *cert. denied*, 404 U.S. 1016. Section 17.261 of the collective bargaining agreement provides that only a "party" may appeal to the Coast Committee:

> Any decision of a Joint Port . . . Labor Relations Committee . . . claimed by either party to conflict with this Agreement shall immediately be referred at the request of such party to the Joint Coast Labor Relations Committee . . .

The decision to deregister petitioners was agreed to jointly by the ILWU and PMA representatives on the Port Committee on June 23, 1963. Ex. 12. Accordingly, the condition permitting an appeal from a decision of the Port Committee to the Coast Committee, namely a failure of

each respective committee to agree, did not exist. Thus, petitioners did not have the right to challenge the merits of the decision by respondents to deregister them and the breach of contract claim is not foreclosed from judicial review.

CONCLUSION

The decision of the Ninth Circuit lends judicial sanction to the total evisceration of the duty of labor unions to provide fair representation. It allows employers and unions to change the rules of the job at their whim, without regard to the legal and contractual rights of large numbers of employees who are excluded from union membership and thus excluded from the collective bargaining process. Various aspects of the factual situation in the case at bench have arisen in other cases, where a job was conditioned on an error-free employment record (*Archie v. Chicago Truck Drivers, etc.*, 585 F.2d 210, 218 (7th Cir. 1978)), and where an employee was fired because he failed to pay a dues increase without notification that his refusal would be grounds for termination (*Brady v. Trans World Airlines, Inc.*, 401 F.2d 87, 99 (3d Cir. 1968), *cert. denied sub nom. International Ass'n of Machinists v. Brady*, 393 U.S. 1048). All persons and parties involved in negotiating and administering collective bargaining agreements, as well as the lower courts, should have the benefit of the decision of this Court so that there will be uniformity of decision.

December 1, 1980.

Respectfully submitted,

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Attorneys for Petitioners

MOTION FILED
SEP 29 1980

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-499

GEORGE R. WILLIAMS, et al.,

Petitioners,

vs.

PACIFIC MARITIME ASSOCIATION, a non-profit corporation, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, and unincorporated association, and I.L.W.U. LOCAL No. 10,

Respondents.

MOTION OF TEAMSTERS FOR A DEMOCRATIC UNION, INDEPENDENT SKILLED TRADES COUNCIL, UNION WOMEN'S ALLIANCE TO GAIN EQUALITY, THE BELL WRINGER, NATIONAL LABOR LAW CENTER OF THE NATIONAL LAWYERS' GUILD AND ASSOCIATION FOR UNION DEMOCRACY, INC. FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR CERTIORARI

AND

BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITION FOR CERTIORARI

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Respondents.

Motion of Teamsters for a Democratic Union, Independent Skilled Trades Council, Union Women's Alliance to Gain Equality, The Bell Wringer, National Labor Law Center of the National Lawyers Guild, and Association for Union Democracy, Inc., for Leave to File Brief as *Amici Curiae* in Support of Petition for Certiorari.

Teamsters for a Democratic Union, Independent Skilled Trades Council, Union Women's Alliance to Gain Equality, The Bell Wringer, National Labor Law Center of the National Lawyers' Guild, and Association for Union Democracy, Inc., a non-profit corporation, move the Court for leave to file the attached brief, as amici curiae, in support of the above captioned Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, as provided in Rule 42 of the Rules of this Court.

The consent of the attorneys for the petitioners has been obtained but the attorneys for the respondents have refused to consent to the filing of such a brief by the six movants.

Movants, as organizations devoted to the protection of employees, are concerned with the impact of the decision below upon the rights of employees and, in particular, upon employees' freedom of speech and association. Because of that impact, movants submit that they are entitled to file a brief in support of the Petition for Certiorari.

WHEREFORE, the six movants named above pray the Court for leave to file the attached Amicus Curiae Brief in Support of the Petition for Certiorari herein.

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BRIEF OF TEAMSTERS FOR A DEMOCRATIC UNION, INDEPENDENT SKILLED TRADES COUNCIL, UNION WOMEN'S ALLIANCE TO GAIN EQUALITY, THE BELL WRINGER, NATIONAL LABOR LAW CENTER OF THE NATIONAL LAWYERS GUILD AND ASSOCIATION FOR UNION DEMOCRACY, INC., *AMICI CURIAE* IN SUPPORT OF PETITION FOR CERTIORARI.

Interest of *Amici*

Teamsters for a Democratic Union (or "TDU") is a North-America-wide reform movement within the Teamsters' Union. It has 8000 dues-paying members organized in 40 chapters in the United States and Canada. Its members are members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, who seek reform and democracy within their Union and better representation in collective bargaining.

TDU's objectives are democratic unionism and better protection for the rights of working people everywhere.

As presently structured, TDU is the product of a merger between two reform groups composed of rank-and-file members of the Teamsters' Union: PROD, or the Professional Drivers' Council and Teamsters for a Democratic Union. Both organizations sought union reform and democracy. The merged organization kept the name of the latter organization and adopted the common objectives and purposes of both. It publishes a monthly newspaper, *Convoy Dispatch,* which advocates democratic reform in trade unionism generally and in the Teamsters' Union in particular.

The Independent Skilled Trades Council (or "ISTC") is a rank-and-file caucus composed of more than 6000 members of the United Automobile Workers of America, who work at machine maintenance and repair, as model makers, engineers, millwrights, electricians, carpenters, and at other skilled trades. Its purposes are to work for greater democracy within the Union and for better representation of workers in the industry and in particular of the workers in the skilled trades.

Union Women's Alliance to Gain Equality (or "Union WAGE") is an organization of more than 300 working women, including housewives and those unemployed, retired or on welfare, in the San Francisco area. It fights discrimination on the job, in the unions, and in society. It is dedicated to achieving equal rights, equal pay and equal opportunity for women workers and to building an organization that will properly represent women on a national level. It fights for union democracy and for better union representation of women workers. It publishes a newspaper, *Union WAGE,* which has some 2000 subscribers nationwide.

The Bell Wringer is a group of telephone workers, members of Local 1101, Communication Workers of

America, in New York City, which publishes (and is organized around) a non-commercial newspaper, for fellow employees, of the same name. Approximately 30 members of The Bell Wringer participate in the preparation of each issue. The Bell Wringer's objectives are greater union democracy, protection of the rights of rank-and-file union members, and better union representation.

The National Labor Law Center of the National Lawyers' Guild (or "Center") is a project of the National Lawyers' Guild, a 6000-member organization of lawyers, legal workers, law students and others founded in 1937. The Center was founded in 1980 and is supervised by the Guild's National Labor Executive Committee. It is a non-profit legal and educational organization. It maintains a referral network of labor lawyers and a clearinghouse of information and research on current developments in labor law. It develops educational and training materials for lawyers and labor activists, provides some litigation and counseling services and publishes a journal, *Labor Update*. Its purposes are to assist the efforts of workers to build unions where there are none and to strengthen and democratize their organizations.

The Association for Union Democracy, Inc. (or "AUD") is a non-profit corporation organized in 1969, registered with the Internal Revenue Service as a tax-exempt organization since 1971 and subsequently classified as a non-private foundation. Its purpose is to further democratic principles and practices within labor organizations by encouraging union members to participate actively in the internal life of their unions and by protecting the exercise of their democratic rights within their unions. Its founders and sponsors include persons who are or have been leaders of labor unions, religious leaders concerned with social justice, members of union public review boards, lawyers, and labor educators.

The *amici* share a common concern in this case over the impact of the decision below upon the rights of employees to exercise their freedom of speech and association within their unions and among their fellow workers. The *amici curiae* consider that freedom on the part of workers is fundamental to any democratically-responsible system of industrial self-government. The *amici* look upon the Labor Movement as one of the great forces which help sustain democracy in our national life but one which, if it is to serve this purpose effectively, must itself be democratic in its internal organization.

At the same time, the *amici* recognize that the freedom of workers is threatened by the power of union officials and their management counterparts to take reprisals upon rank-and-file activists whom the officials regard as "dissidents" and "troublemakers." Especially is this true where union and management, in close collaboration with each other, stand toward employees as an awesome monolith, threatening to destroy the livelihood of any worker who, by outspoken expression of views, might earn "Big Brother's" displeasure.

The decision below upholds, as a non-breach of the bargaining representative's duty of fair representation, an agreement between Union and employer to discharge and exclude from further employment all employees whom the records available to both show to have committed certain offenses. It happens that the offenses were, at the time they were committed, either non-offenses altogether or punishable only by penalties far less severe than discharge. Hence, imposition of the sanction of discharge therefor is patently unjust. But the seriousness of the issue is far greater than that. The power of union officials and management officials jointly to "target" specific persons for discharge by specifying a class that will include them—a power upheld by the Court below—threatens all employees and, most of all, threatens those who have earned the label of "dissidents." In particular, it threat-

ens those who have openly joined and urged fellow employees to join such rank-and-file groups as the *amici*, TDU, and ISTC, and Union WAGE and The Bell Wringer; or employees who have challenged the "sweetheart" relations and agreements between corrupt union officials and their equally corrupt management counterparts; or those who, like the members of Union WAGE, have incurred hostility because of their defense of the rights of women workers.

Because the decision below gives to management and union officials a new device for getting rid of such "dissidents," it helps to chill the exercise of employee freedom of speech and association. In order to dispel that chill and protect the rights of employees, the *amici* urge that certiorari be granted and the decision below be reversed.

Questions Presented

1. Whether a collective bargaining representative breaches its duty toward employees represented by it when it agrees with an employer to discharge and exclude from future employment those employees who have in the past committed certain offenses, which offenses at the time they were committed were either not punishable at all or were offenses for which the maximum punishment was a lesser penalty.

2. Whether a bargaining representative breaches its duty by agreeing with the employer to discharge and exclude from future employment all employees who are members of a class of persons who are shown by records available to have committed certain violations in the past.

3. Whether the discharge or deregistration of employees for offenses which were not punishable by such sanction at the time they were committed is a violation of a bargaining agreement forbidding discharge without cause.

Statement of the Case

The 51 petitioners were, from 1959 to 1963, full-time non-probationary longshoremen, working as such in the Port of San Francisco, pursuant to a collective bargaining agreement between the employers' association ("PMA") and the unions, International Longshoremen's and Warehousemen's Union ("ILWU") and its Local 10. They were registered as "B men" under the machinery established by the agreement. As "B men" they were entitled to seek whatever longshore work remained unfilled after the "A men," who were members of Local 10, had taken such jobs as they wanted (A-83). The "B men" were not allowed to hold any other employment without permission (A-105) and were required to work or be available for work 70% of each 30-day period (A-87).

The bargaining representative for both "A men" and "B men" was Local 10 and its parent ILWU, but only "A men" were admitted to membership in it. The "B men" were denied membership.

The rules governing "B men" were determined by the "A men" who were members of Local 10 (A-84).

The rules governing hiring hall procedures (A-87 to A-88, A-90 to A-95) established maximum penalties for various infractions (A-88, A-95). Thus while certain violations of the rules (e.g. pilferage) called for automatic deregistration, the maximum penalty for the first offense of intoxication was a 30-day suspension (A-88) and the maximum penalties for first and second hiring hall (or "Low-Man-Out") offenses were a 30-day and a 6-month suspension, respectively (A-95).

The rules establishing the maximum penalties for Low-Man-Out violations concluded with the statement that these were the only and official rules on the low-man-out system, that if new rules or changes are needed they would

be issued by the Committee, and that "THERE ARE NO OTHER RULES." (A-95).

"B men" were required to pay $6 per month pro rata for support of the hiring hall. There were no official rules penalizing lateness, but it was the custom for each man who paid late to add a $1 per day surcharge for lateness.

In 1958, a Memorandum was prepared (A-104 to A-106) setting forth the ten types of conduct that could cause deregistration. These ten types of conduct did not include intoxication, or Low-Man-Out violations, or lateness in paying pro rata.

No new penalties were adopted until 1963.

In 1963, Local 10 and PMA agreed to and adopted certain "standards" for promotion of persons from "B" to "A" status (A-98). These standards denied promotion to any "B men" who were shown by the records in possession of Local 10 and PMA to have committed 10 or more hours of Low-Man-Out violations, or to have paid pro rata late eight or more times, or to have failed to meet the 70% availability requirement for any 30-day period or to have been found guilty of any intoxication offense.

However, Local 10 and PMA did not merely deny promotion to those "B men" who were barred from it by the new standards." In addition, they agreed to "deregister" all such "B men" from future employment. They did not consult the "B men" before so agreeing.

As a result, 82 "B men," including the 51 petitioners, each of whom had worked for four years or more as a longshoremen under the agreement between PMA and ILWU, and who had held no other job during that period, were discharged and permanently barred from employment as longshoremen.

The deregistered "B men" grieved their deregistrations through the same labor organization that, as their representative, had agreed to the deregistration of those "B men" who did not meet the "standards" for promotion. Their grievances were decided and acted upon by the same union-employer joint committee that had adopted the "standards" and decided upon the deregistrations.

They thereafter brought suit in federal court charging ILWU and Local 10 with breach of their duty of fair representation, charging PMA wtih complicity in such breach, and charging PMA with breach of the collective bargaining agreement; their complaint sought either promotion to "A" status or restoration of plaintiffs' "B" registration and damages. After trial in District Court on the issue of liability, the District Court accepted *in toto* defendants' proposed findings and conclusions and entered judgment dismissing the action (A-27 to A-77, A-78 to A-79). Plaintiffs appealed but the Court of Appeals affirmed (A-1 to A-26).

POINT I

A bargaining representative breaches its duty of fair representation when it agrees to the discharge of employees for offenses which, when committed, were either not offenses at all or were punishable only by far less severe penalties.

In our system of industrial relations, the collective bargaining agreement and the bargaining relationship that underlies it are part of an effort "to erect a system of industrial self-government." *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 575, 580 (1960). That system is of "a governmental nature"; *Ibid.* Its day-to-day performance is governed by "a new common law—the common law of a particular industry or of a particular plant," derived from the bargaining agreement. *Ibid,* 363

U.S. at 579. But underlying that "new common law" is a more fundamental, quasi-*constitutional* law of industrial self-government, expressed primarily in the statutory power of the bargaining representative to represent all employees in the bargaining unit and in the representative's commensurate statutory duty to represent all employees "honestly and in good faith and without invidious discrimination or arbitrary conduct." *Cf.: Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554, 570 (1976); *Vaca* v. *Sipes*, 386 U.S. 171, 190 (1967). As this Court has repeatedly emphasized, that duty must serve as a "bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of the federal labor law"; *Vaca* v. *Sipes, supra*, 386 U.S. at 182; *Hines, supra*, 424 U.S. at 564.

The statutory power of a bargaining representative and the commensurate duty imposed upon it by statute comprise a basic law of industrial self-government that is quasi-constitutional in two respects: first, it is the constitutional law of industrial self-government, analogous to that of Constitutional government; and, second, it is shaped by Constitutional imperatives. If Congress, having conferred upon the bargaining representative the power to represent all employees in a bargaining unit, had failed to impose a commensurate statutory duty upon the representative toward those employees then, as this Court has noted, "constitutional questions [would] arise." *Steele* v. *Louisville & Nashville R. Co.*, 323 U.S. 192, 198 (1944). "For," as this Court went on to explain,

> ". . . the representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those rights."

The duty imposed upon the bargaining representative is therefore similar to that imposed upon a legislature—and at least as strict.[1] In finding that the Railway Labor Act imposed such a duty upon a bargaining representative, this Court described that duty, *Ibid.*, 323 U.S. at 202, as

> ". . . at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates."

And, of course, a similar duty is imposed upon representatives by the National Labor Relations Act; *Wallace Corp.* v. *NLRB,* 323 U.S. 248, 255-56 (1944).

Among the protections embraced within the duty of fair representation—and, thus, among the quasi-constitutional limitations upon the power of a bargaining representative's power to deny, restrict, destroy or discriminate against the rights of employees whom it represents—are industrial versions of the basic constitutional protections against double jeopardy and against ex post facto laws. Such protections have long been recognized, by the arbitration decisions, as part of the "common law" established by the bargaining agreements. *Cf.* Elkouri and Elkouri, *How Arbitration Works,* 3rd Ed. 1973, pp. 636-638(double jeopardy); 641-643 (requirement that employees have knowledge of a rule at the time of the alleged violation). As Arbitrator Stanley H. Sergent has noted in *Marley Cooling Tower Co.,* 71 LA 307, 313 (1978),

> "A fundamental concept relative to the validity of any plant rule is that employees must have knowledge that such a rule exists."

---

[1] The protections embraced within that duty are procedural as well as substantive; they include the right of notice and hearing; *cf. Ibid.,* 323 U.S. at 204. The representative here accorded no such rights to the "B men" before agreeing to the deregistration. And the grievance hearings conducted *after* such agreement were neither fair nor impartial. See *infra,* page 18.

And compare: *Shenango, Inc.,* 67 LA 867 (1976; Arbitrator Sidney L. Cahn). Such protections are inherently within the "common law" of the industry or plant, since they are necessarily among the quasi-constitutional limitations upon the power of a bargaining representative to bargain on behalf of employees.

Here, the bargaining representative exceeded those limitations and violated its duty to the employees it represented by agreeing with the employer to punish with the supreme penalty of deregistration—or with what has appropriately been termed "the industrial equivalent of capital punishment"; *Griffin* v. *UAW,* 469 F.2d 181, 183 (4th Cir. 1972); *Miller* v. *Gateway Transp. Co., Inc.,* 616 F.2d 262, 277, fn. 12 (7th Cir. 1979)—violations, in the past, of newly-adopted "standards" of employee conduct, even though the actions charged as violations either were not, at the time they were committed, violations of any rule at all or were violations for which the maximum penalty, at the time they were committed, was a suspension of limited duration.

Thus Ellis E. Graves had committed one instance of intoxication in 1960. The maximum penalty for a first intoxication offense, prescribed by the rules in force at that time, was a 30-day suspension (App. A-88). Upon his commission of the offense, Graves was, in 1960, duly suspended for 30 days, and returned to work. He never committed any other offense. But the "standards" adopted in 1963 called for deregistration of any "B man" who had in the past been found guilty of an instance of intoxication. At the time they were adopted, the records clearly revealed Graves's offense and punishment. Hence the bargaining representative and the employer knew, or could easily discover, at the time they agreed to the 1963 "standards," that Graves would be deregistered in consequence.

It follows that, as to Graves, the representative violated its duty by subjecting him twice to jeopardy and punishment for the same offense and by imposing upon him a punishment greater than that called for by the rules in force at the time the offense was committed.

Similarly, Ulysses Hawkins, during the years from 1959 to mid-1963, paid his pro rata late nine times. Such late payment was not forbidden by any rule or custom. However, it was the custom for anyone who paid late to add a $1-per-day surcharge or penalty. Hawkins did, and the fact was recorded in the hiring hall's records. But in 1963, the newly-adopted "standards," agreed to by the bargaining representative, called for the deregistration of any "B man" who had paid late eight or more times. Hence Hawkins, like Graves, was deregistered. In thus agreeing to deregister him the bargaining representative punished him a second time for an "offense" for which he had already been penalized and imposed upon him punishment for conduct which was not an offense at all, and not punishable at all (except by $1-per-day surcharge) at the time it was committed.

And likewise, Antonio Cafeterio, on Sunday, August 12, 1962, was absent from the hiring hall. The next day, relying upon the informal "Sunday rule," excusing unavailability on Sundays, Cafeterio went to work without penalizing himself by adding hours to his time. That was his only offense and it was entirely innocent. The maximum penalty for a first Low-Man-Out offense, under the rules in force at the time, was a 30-day suspension (A-95); the rules plainly said that these were the *only* rules regarding Low-Man-Out—and, in capital letters, "THERE ARE NO OTHER RULES" (A-95). Nevertheless, the "standards" adopted in 1963 (A-98) called for deregistration of all "B men" who had committed 10 or more hours of Low-Man-Out violations, a class of which the records revealed Cafeterio to be a member.

If it be true that the duty of fair representation expresses, in the area of industrial self-government, the rough equivalent of Constitutional limitations upon a legislature to deny, restrict, destroy or discriminate against the rights of those for whom it legislates then a bargaining representative's agreement, with the employer's association, to impose a second punishment for a single offense upon an employee who has already been punished for that offense is a violation of that duty. And similarly, a bargaining representative's agreement with the employer to impose the punishment of discharge or deregistration upon an employee for an offense which, at the time it was committed, was either no offense at all or else an offense whose maximum punishment was a penalty far less severe than discharge, is likewise a violation of that duty.

It follows that the punishments of deregistration imposed upon petitioners here were a breach of the bargaining representative's duty toward those petitioners.

It is no answer to say that the "B men" were told in a 1958 Memorandum[2] that a union-employer joint committee could (assuming the Union's agreement to do so) deregister them ". . . for any other cause." Similarly,

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[2] See Opinion below, at A-19 to A-20. Section 9 of the 1958 Memorandum is given in full in the decision of the Unemployment Insurance Appeals Board at pages A-104 to A-106. The Memorandum lists, in ten numbered paragraphs, the types of misconduct that might cause deregistration before going on, in the eleventh paragraph, to add "Or for any other cause."

It is worth noting that the ten types of misconduct listed in the Memorandum did *not* include either intoxication or Low-Man-Out violations or lateness in paying pro rata. The necessary implication is that the maximum penalties for such offenses, as specified in the existing rules, were in fact the maximum penalties for any violation committed prior to such time as the existing rules were amended. And these did not permit deregistration for a first intoxication offense (A-88), or for a first or second Low-Man-Out offense (A-95) or for lateness in paying pro rata.

it is no answer to say that upon initially applying for registration, each "B man" was required to sign a letter acknowledging that his registration "shall be subject to agreements between PMA and ILWU" and that "registration may be revoked in accordance with such agreements and such rules . . . hereafter agreed upon or adopted by the Association and the Union. . . ." There is no reasonable way in which that can be interpreted as authorizing the bargaining representative to agree to deregistration of employees by retroactive application of new "rules" or "standards". What is at issue here is precisely the representative's agreement, in 1963, to such deregistration for prior conduct.

No objection is made here to the power of the union and employer to adopt new rules that prohibit specified conduct and punish any violation of those rules committed in the future. What is objected to is the bargaining representative's agreement to have newly-adopted punitive rules or "standards" applied retroactively to the past conduct of employees it represents. In agreeing to such retroactive application, the representative violates its duty toward those employees. And no pre-hire letter or Memorandum can nullify that duty or absolve the representative from its violation.

POINT II

The union's agreement to deregistration of petitioners was a bill of attainder and thus a violation of its duty of fair representation.

In 1963, at the time that Local 10 and ILWU agreed to the new "standards" and agreed, also, to deregister those "B men" who failed to meet those "standards" because of conduct prior to their adoption, the identities of those persons who would thereby be deregistered were either known or were easily ascertainable from records in the bargaining representative's possession.

Thus it was known or could easily be learned from the records that Graves had been found guilty of an instance of intoxication in 1960 and had been suspended for 30 days as punishment. It was known or could easily be learned from the records that Hawkins had paid his pro rata late nine times between 1959 and 1963. And it was known or could easily be learned from the records that Cafeterio had, however innocently, committed a Low Man Out violation in 1962 of more than ten hours by failing to add hours to his time for his unavailability on Sunday, August 12.

The decision to deregister the class of persons who were shown by the records to have committed any violations of the "standards" was, in short, a bill of attainder. Nor can the seriousness of this fact be easily exaggerated. By approving the bill of attainder that was adopted by ILWU and PMA, the decision below invites unions and managements everywhere to adopt similar bills of attainder, for whatever purpose. Most significantly, it invites those union officials and their management counterparts desiring to get rid of employees whom they consider to be "dissidents" to search the records available to them to find some way of specifying or describing a class of persons that will include one or more of the leading "dissidents." One way of doing so is to specify the class of persons who have performed some particular type of conduct which the "dissident" has been found to have performed. Then, by adopting "standards" that exclude from further employment all members of the class, they will exclude the "dissidents." The process is easy to implement and need display no outward sign of the animus behind it—and hence need give the victimized employee no opportunity to prove actual hostility or discrimination.

Even where the bargaining representative has not sought to target specific persons, its participation in the process of selecting them for discharge compromises its ability to

perform its duties as bargaining representative on behalf of the grieving dischargees. Thus, in this case, in order to grieve their discharges, the 82 "B men" had to go to the union that had already agreed to deregistration of the class of persons of which they were members, and to the joint committee of PMA and ILWU officials who had participated in the process. As the court below noted (at A-14, fn. 13),

> "Those persons representing PMA and ILWU during the grievance proceedings had either participated in deregistering the appellants or had voiced opinions on their cases. It is unlikely that such persons could be entirely fair or impartial. This lack of neutrality in the adjudicating bodies renders exhaustion of remedies futile."

The decision below places "dissident" employees at the mercy of their adversaries in authority. It chills the freedom of employees to express views critical of the union officials or of the latter's relations with employers. It chills also their freedom to join and to urge fellow-employees to join such groups as the *amici,* TDU and ISTC and Union WAGE and Bell Wringer, in order to work through them for union democracy, for better bargaining representation, for advancement of their skilled craft, or for equality for women in employment. The decision below does, in short, all the harm that the Framers of our Constitution feared from the legislative power to adopt bills of attainder—and which moved them to curb such power.

The fact that Graves, Hawkins, Cafeterio and the other petitioners were not specifically named in the bill of attainder is, of course, irrelevant; *cf. United States* v. *Brown,* 381 U.S. 437, 461 (1965). And the punishment imposed upon them was substantially the same as that imposed by other bills of attainder that have been struck down by this Court. In *Cummings* v. *Missouri,* 4 Wall 277 and *Ex Parte Garland,* 4 Wall 333 (1866), the bills of attainder

that were struck down by this Court barred from the practice of specific professions persons who, having taken part in the Rebellion, could not truthfully take an oath that they had not. In *United States* v. *Lovett,* 323 U.S. 303 (1946), the bill of attainder barred payments of federal salaries to three named persons. In *Brown, supra,* the bill of attainder barred all persons who had within the past five years been members of the Communist Party from holding union office. And the vice of the attainder here—namely, that it specifies a class whose members' identities were known or easily ascertainable at the time it was adopted—is the same as the vice of the bills of attainder previously struck down by this Court.

If the power to adopt a bill of attainder be placed in the hands of a legislature, then

> ". . . no man can be safe, nor know when he may be the innocent victim of a prevailing faction. The name of liberty applied to such a government, would be a mockery of common sense."
>
> (A. Hamilton, quoted in United States v. Brown, supra, 381 U.S. at 444.)

If such power be placed—as it is placed by the decision below—in the hands of a collective bargaining representative, it has like effect. For when the representative has power to exclude a specific class of easily identifiable persons from further employment, then no employee can be safe nor know when he may be the innocent victim of union officials unsympathetic to his views. The name of liberty applied to such a system of industrial self-government ". . . would be a mockery of common sense."

The bills of attainder that Hamilton referred to, and those struck down by previous decisions of this Court, were adopted by legislatures. The bill of attainder at issue here was adopted by a bargaining representative, jointly with employers. That, of course, is a distinction. But if, as this Court said in *Steele, supra,* the limitations

imposed by Congress upon the powers of a bargaining representative are "at least as exacting . . . as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates," then any difference disappears from the distinction.

It follows that the bargaining representative's violation of the limitations placed by Congress upon its power in regard to employers it represents entitles the petitioners to relief in accordance with the courts' traditional jurisdiction to curb arbitrary conduct by the individual employee's statutory representative. See: *Vaca* v. *Sipes, supra,* 386 U.S. at 183.

A bill of attainder inflicts punishment. In judging the legality of the attainder, however, it is not necessary to inquire whether it is retributive. The Constitutional ban upon bills of attainder, set forth in Article I, §§ 9 and 10 of our Constitution, is not restricted to instances of retribution. *United States* v. *Brown, supra,* 381 U.S. at 458. Similarly, it is not necessary to find hostility or malice to find a violation of the representative's breach of its duty of fair representation; it is sufficient that the representative's actions be arbitrary. *Vaca* v. *Sipes, supra,* 486 U.S. at 190, *Hines* v. *Anchor Motor Freight, Inc.,* 424 U.S. at 570. And here the representative's actions plainly were arbitrary. Indeed, when we speak of a bill of attainder we are speaking of precisely the kind of arbitrariness that characterizes a breach of the duty of fair representation.

POINT III

Retroactive application of the "standards" violates the bargaining agreement.

It is well established that, where a labor organization fails to protect an employee's rights under a bargaining agreement, the employee himself may bring suit. *Smith*

v. *Evening News Association,* 371 U.S. 195 (1962); *Hines* v. *Anchor Motor Freight, Inc., supra.*

Such a claim was made by petitioners here. The District Court appears to have dismissed that claim on the strength of a Conclusion (#7; A-74) to the effect that "[t]he explicit promotion standards" were authorized by and adopted in accordance with the bargaining agreement. The Findings say nothing about whether the retroactive application of those "standards" for purposes of *de*-registering employees was authorized by, or adopted in accordance with, the agreement.

Similarly, the Court of Appeals upheld dismissal (A-25 to A-26) on the ground that § 17.851 of the agreement provides that "[m]ore stringent rules and penalties than those provided hereinabove . . . may be adopted or modified by . . . the Joint Coast Labor Relations Committee and . . . shall be applicable" (A-25). It concluded (A-26), that

> "Because the 1963 Rules were adopted pursuant to the explicit procedures provided in the [agreement], enforcement of them to deregister applicants did not breach the collective bargaining agreement."

That holding contains an obvious *non sequitur.* Power to adopt new rules for prospective application obviously does not imply power to apply them retroactively. Both courts held that PMA and the unions had that power without, apparently, addressing that question seriously.

The rules that were in existence prior to adoption of the 1963 "standards" provided that the maximum penalty for the first intoxication offense or the first two Low-Man-Out offenses was to be a suspension of specifically-limited duration. They provided no penalty for lateness in paying pro rata, although custom called for a $1 per

day surcharge. It was understood that no heavier penalty for such offenses could be imposed. In the case of Low-Man-Out violations, the Rules made this explicit. After stating the maximum penalties, the Rules concluded (A-95),

> "These are the only and official rules on the low-man-out system as revised by the Labor Relations Committee up to December 30, 1958. If new rules or changes are needed they will be issued by the Committee.
>
> THERE ARE NO OTHER RULES."

And they remained the only and official rules until adoption of the "standards" in 1963.

There were no other rules, prior to the adoption of the "standards" in 1963, authorizing deregistration of longshoremen for the offenses of intoxication, Low-Man-Out violations or lateness in pro rata payments. The bargaining agreement prohibited discharge of any "B man" except for "cause." Since the rules in force did not permit discharge for the offenses in question, it is clear that those offenses were not "cause."

None of the 82 "B men" was validly deregistered for violation of any of the rules existing *before* the "standards" were adopted, or for any offense committed *after* the "standards" were adopted. It follows that the 82 "B men" were deregistered without "cause" and therefore in violation of the bargaining agreement.

CONCLUSION

For the foregoing reasons, the undersigned submits that the Petition for Certiorari should be granted.

Respectfully submitted,

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